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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: VII

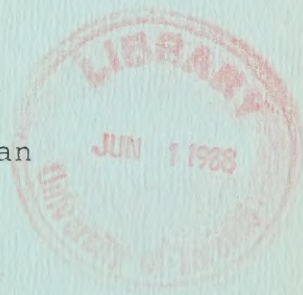
DATE: Wednesday, May 18th, 1988

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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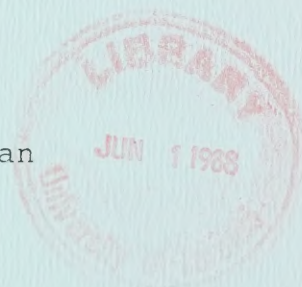
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Ramada Prince Arthur  
Hotel, 17 North Cumberland St.  
Thunder Bay, Ontario, on Wednesday,  
May 18th, 1988, commencing  
at 9:30 a.m.

-----  
VOLUME VII

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member







A P P E A R A N C E S

MR. V. FREIDIN )	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER )	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIOO
MS. E. CRONK )	LUMBER MANUFACTURING
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL
	COUNCIL
MR. F. CASTRILLI )	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS )	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS )	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER )	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON )	NORTHWATCH
MS. B. LLOYD )	





APPEARANCES: (Cont'd)

MR. J. W. ERICKSON)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	PRODUCTS
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON





APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





I N D E X   O F   P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>RICHARD M. MONZON,</u> <u>LARRY A. DOUGLAS,</u> Resumed	1058
Continued Cross-Examination by Mr. Castrilli	1058
Cross-Examination by Mr. Hunter	1206





I N D E X   O F   E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
25	Class Environmental Assessment for Timber Management on Crown. Lands of Ontario dated December, 1985.	1204
26	Map entitled; Nishnawbe-Aski Area, Forest Management Units, 1987.	1205



1       ---Upon commencing at 9:30 a.m.

2                   THE CHAIRMAN: Thank you. Good morning.

3                   MS. MURPHY: Mr. Chairman, I wonder if I  
4       could just take a minute this morning to deal with a  
5       short procedural matter.

6                   THE CHAIRMAN: Very well.

7                   MS. MURPHY: I have spoken to my friend  
8       Mr. Castrilli and he said that would be fine with him.

9                   It would help me if I could just advise  
10      you about this situation and deal with it this morning.

11                   Basically what I am trying to deal with  
12      is the issue of finding a way to have people agree to  
13      non-contentious facts, which it is a situation about  
14      which we wished if we could do that.

15                   Basically the situation is this: That  
16      the next panel is about statistical information dealing  
17      with the forest products industry and is probably one  
18      that's worth trying to get some kind of agreement --  
19      well, it is the next panel that I am serving, Panel 5,  
20      so I have it now and I am going to be distributing it  
21      to people, and I was trying to you find some way to  
22      get -- to find out whether we could get some agreement  
23      on facts now.

24                   My first problem was, of course, who has  
25      to agree. We are dealing with fifty parties. And so I



1 discussed that matter with some of my colleagues and  
2 asked them if they had some thoughts about it. I can  
3 advise you that they were in total agreement that we  
4 have a problem and that is basically as far as we got.

5 So I have a proposal - I think if anybody  
6 else has any ideas it would be helpful - but I think  
7 this is what I would suggest: What I am planning to do  
8 is, you realize, this is the first panel that I am  
9 allowed to distribute to the short list, the 19 people  
10 who are receiving full-time correspondence.

11 What I will suggest is this: That I  
12 distribute that statement to the short list and I ask  
13 the people who receive the statement to advise whether  
14 they can agree that the statement itself can go in  
15 essentially as an agreed statement of facts.

16 Now, in my view, there are basically three  
17 things that could happen: First of all, all of the  
18 people could agree. If all 19 of those people agree  
19 that the document can go in as an agreed statement of  
20 facts, then, as I see, what would happen is is at the  
21 time that panel is meant to go in, we would file the  
22 witness statement, we would advise the Board that those  
23 19 parties had agreed that that could be dealt with as  
24 an agreed statement of facts, we would then advise all  
25 of the other parties -- up to the number of 50, at this

1 point - that that was happening, and that the 19 people  
2 had agreed, the document would be filed as evidence and  
3 then distributed to the repositories and, as I  
4 understand it, the Board procedure that allows people  
5 to ask interrogatories after evidence is filed would  
6 allow those people to ask questions on that evidence  
7 after it is filed, if they chose to do so.

8 So I think that would basically cover off  
9 their rights to cross-examine or ask questions about  
10 the material, if they chose to do so at that stage.

11 Of course, the other option is that no one  
12 would agree and then we would just deal with --

13 THE CHAIRMAN: I cannot recall looking -  
14 because I do not have our Procedural Order in front of  
15 us - how long the people had to pose interrogatories on  
16 filed material that would end up in the repositories.

17 MR. FREIDIN: 20 days.

18 MS. MURPHY: I believe it was 20 days.

19 THE CHAIRMAN: 20 days.

20 MS. MURPHY: I think what I would like to  
21 do is if - I mean, there is a little bit of time here -  
22 if the parties could advise me that they agreed prior  
23 to the normal time that interrogatories would be filed  
24 with us, prior to that 30 days. We could then advise  
25 all of the other parties at that time that in a month

1 from now this material will be filed, and when it is,  
2 you will have still have another 20 days after that to  
3 ask any questions.

4 That would require that in my letter that  
5 goes out with this panel, that I would ask people to  
6 advise me within about three weeks whether they could  
7 agree.

8 If they couldn't agree, I would say, give  
9 me your interrogatories in the normal 30 days, and then  
10 that would give us some information to give to the  
11 other parties.

12 THE CHAIRMAN: That should not pose too  
13 many difficulties to those parties because they would  
14 be reviewing that panel anyways to pose their own  
15 interrogatories--

16 MS. MURPHY: That's right.

17 THE CHAIRMAN: --if they so chose to do.  
18 So they would probably be able to get a sense of  
19 whether or not they could agree.

20 MS. MURPHY: Yes, that's...

21 THE CHAIRMAN: Would they also have the  
22 right to pose interrogatories?

23 MS. MURPHY: Well, I think the idea is --  
24 conceptually the idea is, I think, if they are agreeing  
25 to the facts, then --



1                   THE CHAIRMAN: But suppose they want  
2 clarification on the facts, not that they are opposed  
3 to the facts, but that they, for one reason or another,  
4 are not sure that they go far enough, or that all of  
5 the facts that they need are not there?

6                   MS. MURPHY: There would still be, of  
7 course, the time to send in interrogatories and to  
8 respond.

9                   The problem is that at the time the  
10 material is filed with the Board -- the main thing we  
11 would like to be able to do when it is filed is advise  
12 that these facts are agreed to by.

13                   And, you know, if it is not even all of  
14 those people, it could just be certain of them, but  
15 that would let us know then who is likely to  
16 cross-examine, if they don't agree, what parts of the  
17 evidence-in-chief would be required, and what parts  
18 wouldn't.

19                   So that the third option would be that  
20 some people would agree and some people wouldn't, or  
21 some people would agree to part. That would at least  
22 allow us to exercise some judgment about what parts  
23 needed to go in as evidence-in-chief and some idea who  
24 might cross-examine.

25                   THE CHAIRMAN: And would it be expected

1       that the parties who did not agree, at least in part,  
2       would notify you as to which part--

3               MS. MURPHY:  It would be helpful.

4               THE CHAIRMAN:  --so that you could  
5       provide the appropriate witness to cover off that, if  
6       necessary.

7               I know it gets a bit complicated, but I  
8       really feel the Board should explore all possibilities  
9       of scoping some non-contentious issues.

10              I think this is one of the first times  
11       the Board has actually endeavored to try this type of  
12       thing at the hearing stage.

13              If we can accomplish something, I think  
14       it would be worthwhile.  If it turns out that, for one  
15       reason or another, it does not work or we cannot get  
16       the appropriate agreement from the parties--

17              MS. MURPHY:  A least we will have tried.

18              THE CHAIRMAN:  --we will have tried and  
19       we will have to revert back and, you know, this type of  
20       exercise may have to await a statutory amendment or a  
21       promulgation of a rule specifically by the Board.

22              But I think we should go through the  
23       exercise and at least try, and I am very pleased and I  
24       think want to commend the Ministry for, at least,  
25       taking my suggestion seriously and looking at ways in

1       which to limit the evidence coming in orally, if at all  
2       possible.

3                       Does anyone have any suggestions or  
4       comment on the suggestions put forward to us?

5                       Mr. Tuer?

6                       MR. TUER:  Mr. Chairman, I am also  
7       anxious to see -- explore ways in which the evidence  
8       can be scoped, and I don't want to sound discouraged .  
9       but I will say no more than it really depends on what  
10      is in the evidence package.  It is impossible to  
11      respond intelligently to the matter until I see what's  
12      in it.

13                      THE CHAIRMAN:  No, no.  I think that is  
14      understood, certainly by the Board.  I mean, you are  
15      not asked to be giving blanket approval to something  
16      that you do not even know what it consists of.

17                      MR. TUER:  That's not being requested,  
18      but as to whether or not the process that's been  
19      suggested would work or not work, I think, depends upon  
20      the nature of the evidence.

21                      It may well be that when Panel 5 comes we  
22      can through it and eliminate large portions of it that  
23      we won't be interested in cross-examining on.  There  
24      may be other evidence which we will be very interested  
25      in cross-examining on.



1                   THE CHAIRMAN: Right. I guess what the  
2 Board is asking, Mr. Tuer, is some guidance on, from  
3 counsel is: Given the suggested procedure that is put  
4 forward, do counsel see anything particularly wrong  
5 with the idea of having the parties outside of the  
6 full-time sessions - that is what I think the Board is  
7 concerned about to a certain extent - participate or  
8 have the right to cross-examine after the material has  
9 been deposited as an agreed statement of fact or a  
10 partially agreed statement of fact, and then having the  
11 right to pose interrogatories within 20 days?

12                   MR. TUER: I don't see anything wrong.

13                   MS. MURPHY: Just for clarification, that  
14 part of the Procedural Order which is, I think it is  
15 III, sub (2) or sub (3), allows 30 days for those  
16 parties to ask interrogatories after the material is  
17 filed and then requires responses 20 days thereafter.

18                   THE CHAIRMAN: Okay. Could I impose upon  
19 the Ministry a little bit further?

20                   Would you mind setting out on a sheet of  
21 paper, when you get a chance, what you have suggested  
22 to the Board.

23                   I have written most of it down, but as  
24 you aware, we do not get the transcript for two or  
25 three days and we would like to sort of review it at

1       our leisure, step by step.

2                   MS. MURPHY: That's fine. What I have -  
3       and I will get a copy for you, Mr. Chairman - but what  
4       I have is a draft that would be draft of a letter to  
5       the Board explaining what it is we think might happen.

6                   It is a draft of a letter as well that  
7       would go to the parties with the witness statement  
8       that's being served, and also another document that I  
9       have called a notice which basically advises people  
10      that we are giving them this information and that we  
11      would like them to advise us whether they agree.

12                  I have attempted to put that notice in  
13      layman's language as much as possible given that -- and  
14      explain what this would mean to people, given that some  
15      of these people aren't represented.

16                  So I will certainly make a copy of that  
17      available to you as soon as possible.

18                  THE CHAIRMAN: Okay. One last  
19      clarification question.

20                  If there were an agreed statement of fact  
21      it would be exhibited before the Board, would you be  
22      proposing to call anybody to skim the highlights or  
23      would it just go in with no witness being called at  
24      all?

25                  What is your feeling on that?

1 MS. MURPHY: Well, I mean, that's going  
2 to be a matter of judgment. I would assume someone is  
3 going to have to stand up and file the material and say  
4 that is the evidence.

5 So whether that requires a witness to  
6 stand up and do that or not is the first question. And  
7 I would assume that whether anyone has to explain  
8 generally what the document is or not, or deal with any  
9 of the evidence, is going to depend very much on  
10 whether everyone agrees or not.

11 THE CHAIRMAN: Well, I guess my thought  
12 in that regard is: Is that in order to assist other  
13 parties out there who are not attending the hearings,  
14 to have at least a cursory sense of what that agreed  
15 statement of fact contains, it would probably be  
16 helpful to have something on the transcript record  
17 other than just an exhibit number--

18 MS. MURPHY: That's right.

19 THE CHAIRMAN: --which means that they  
20 then have to go from the transcript to try and get  
21 ahold of the exhibit itself to find out what is in that  
22 panel's evidence and that might be a bit difficult.

23 MS. MURPHY: That's why I was suggesting,  
24 Mr. Chairman, that if that was going to happen, if in  
25 fact the material itself was going to be filed as the



1 evidence, what we would do is circulate that to all the  
2 repositories in the same way that a transcript is.

3 THE CHAIRMAN: Okay. So that exhibit  
4 would actually be on file as well?

5 MS. MURPHY: That's right.

6 THE CHAIRMAN: So that would certainly  
7 help that.

8 MS. MURPHY: Yes.

9 THE CHAIRMAN: Okay. Well, I think that  
10 is very helpful. Thank you.

11 Mr. Campbell?

12 MR. CAMPBELL: Mr. Chairman, we certainly  
13 support efforts of this type and we will do what we can  
14 to encourage it to a fruitful conclusion.

15 If I could just speak for a moment to the  
16 last point about having some witness appear. It would  
17 be my submission that circulating the agreed statement  
18 of fact, in effect, takes care of that matter and that,  
19 in fact, if this is going to work, it can only work if  
20 it is understood that witnesses won't appear, because  
21 as soon as witnesses get in the stand and start talking  
22 about the material, we are then immediately in the  
23 problem of: Do they say something inadvertently or  
24 vertently that is somewhat different or is interpreted  
25 as being different from the agreed statement of fact.

1                   That could be a major problem.

2                   THE CHAIRMAN: No, I quite agree with  
3                   you. I think my concern was that the exhibit itself  
4                   would not be available to people who are not attending  
5                   and, therefore, they look at a transcript and see that  
6                   an agreed statement of fact has been exhibited, do not  
7                   have the exhibit to look at and have no idea whatsoever  
8                   what is in that agreed statement of fact.

9                   But I think the suggestion that it will  
10                  be filed on deposit covers that off. So I think what  
11                  you are saying is quite correct.

12                  Any other comments from anyone on this  
13                  proposed procedure?

14                  (No response)

15                  All right. After the Board receives the  
16                  Ministry's submission, we will certainly consider it  
17                  and come back to you within a short time and give you  
18                  the Board's view on the procedure.

19                  MR. CAMPBELL: Mr. Chairman, would it be  
20                  possible for MNR to distribute copies of that material  
21                  as well to the parties, it is obviously of interest to  
22                  them.

23                  MS. MURPHY: Certainly, I will go and  
24                  make copies right now.

25                  THE CHAIRMAN: Thank you very much.

1                   Mr. Castrilli, are you ready to continue  
2 your cross-examination?

3                   MR. CASTRILLI: Yes, Mr. Chairman.

4                   I have one preliminary matter.

5                   I now have page 5 of Exhibit 20 which  
6 I would like to file with the Board at this time and  
7 the parties.

8                   THE CHAIRMAN: I think we will just, if  
9 it is okay with you, just substitute the page in the  
10 actual exhibit and certainly not give this an  
11 additional number.

12                  MR. CASTRILLI: No, that's right.

13                  THE CHAIRMAN: Does anybody have a  
14 stapler handy by any chance?

15                         (Handed)

16                         Thank you.

17                  MR. CASTRILLI: Thank you, Mr. Chairman.

18

19                                 RICHARD MONZON,  
20                                 LARRY DOUGALS, Resumed

21                   CROSS-EXAMINATION BY MR. CASTRILLI: (Cont'd)

22                   Q. Mr. Monzon, yesterday we were  
23 speaking of District Land Use Guidelines, and I just  
24 wonder if you can confirm for me that the guidelines,  
25 all of which I understand were completed approximately

1 in 1983, are in the process of being updated?

2 MR. MONZON: A. I can't speak to that  
3 matter specifically, but perhaps Mr. Douglas...

4 Q. Mr. Douglas?

5 MR. DOUGLAS: A. There is not an overall  
6 review that was undertaken right now. There are  
7 procedures in place for amendments for individual  
8 documents, as necessary.

9 Q. And amendment of those documents,  
10 would that go through the process that preceded the  
11 development of the documents themselves, including the  
12 public process?

13 A. Essentially, yes, depending on the  
14 type of amendment we are talking about. If it is a  
15 significant amendment it will go back through the  
16 public process.

17 Q. Okay. Now, would you agree with me  
18 that it is not acceptable that the Ministry of Natural  
19 Resources use the District Land Use Guidelines as a  
20 basis for northern decision making?

21 MR. MONZON: A. As a basis--

22 Q. Yes.

23 A. --for northern decision making?

24 It has always been the intention that the  
25 guidelines would be an indication of the -- who wants



1 the -- the way to use the land and water resources of  
2 the province to achieve the objectives of the Ministry.

3 It hasn't been the intention to use them  
4 for anything more than that.

5 Q. So your position is that there is no  
6 intention within the Ministry of Natural Resources to  
7 use them as a basis for decision making; is that  
8 correct?

9 A. You indicated, I believe, Mr.  
10 Castrilli, a basis for northern decision making. I am  
11 not sure what you mean by that.

12 Certainly there were a number of  
13 recommendations that came out of the Land Use  
14 Guidelines and some of those recommendations have been  
15 acted on, most notably the recommendations relative to  
16 the establishment of some provincial parks.

17 Most notably the recommendations relative  
18 to the establishment of some provincial parks, but I am  
19 not sure what you mean in the context of 'northern  
20 decision making'.

21 Q. Mr. Monzon, isn't it true that  
22 Commissioner Fahlgren took the position that it was not  
23 acceptable for the Ministry of Natural Resources to use  
24 those guidelines as a basis for northern decision  
25 making?

1                   A. I believe that is the position of Mr.  
2     Fahlgren, yes.

3                   Q. Why did Commissioner Fahlgren take  
4     that position if that wasn't in fact the impression he  
5     was left with by the Ministry of Natural Resources?

6                   A. I think Mr. Fahlgren has taken that  
7     decision pursuant to his analysis of the guidelines, of  
8     the process that was followed.

9                   Q. Did he misunderstand? Did he get it  
10    wrong again; is that your testimony?

11                  A. I am not sure, to use your terms,  
12    that is he has got it wrong again.

13                  Q. Let's turn to page 8-20 of Exhibit  
14    24.

15                  A. I am sorry?

16                  Q. Page 8-20. Sorry, that is the  
17    Chapter 8 of the Fahlgren Report that I filed  
18    yesterday.

19                  A. Okay.

20                  Q. The fourth paragraph.

21                  THE CHAIRMAN: Just a moment please, Mr.  
22    Castrilli, until we find it.

23                  MRS. KOVEN: Is that '78?

24                  MR. CASTRILLI: I am sorry. I said  
25    Exhibit 24, page 8-20, paragraph 4.

1 THE CHAIRMAN: Thank you.

2 MR. CASTRILLI: Q. Mr. Monzon, do you  
3 have that page before you?

4 MR. MONZON: A. Yes, I do.

5 Q. Now, as you can see in the fourth  
6 paragraph on that page, the concern of Commissioner  
7 Fahlgren is set out there and it is the concern that I  
8 previously posed to you as a question and, in  
9 particular, Commissioner Fahlgren says in the fifth  
10 line:

11 "It is unacceptable that the Ministry of  
12 Natural Resources should use these  
13 guidelines as the basis for decision  
14 making in the north."

15 Doesn't that -- what does that tell you  
16 about the position of Commissioner Fahlgren with  
17 respect to these guidelines?

18 Isn't he saying he finds it unacceptable  
19 they will be used in the manner he understood them to  
20 be used during the course of his investigations?

21 A. That's the way I would read that  
22 statement, yes.

23 Q. What is your position with respect to  
24 that statement?

25 A. My position on that statement would

1 be the same position that the Minister of Natural  
2 Resources made before the Royal Commission on January,  
3 18th, 1983.

4 And at that point - and I am quoting from  
5 page 50 of Appendix 14 of the Commission's Report - the  
6 Minister indicated that:

7 "Consequently, these land use plans are  
8 simply viewed as guidelines which have no  
9 direct legal affect on committing the  
10 resources of the province to specific  
11 end-uses or in delineating where various  
12 resource development/conservation  
13 activities can or cannot be carried out.  
14 I must emphasize that...decision  
15 making...is not something undertaken by  
16 public servants through a land use  
17 planning process. Such decisions are the  
18 purview of the Government, be it the  
19 individual Cabinet Minister responsible  
20 for the legislation which authorizes such  
21 decisions, or through the collective  
22 wisdom of Cabinet. The accountability  
23 for such decisions is well established."

24 Q. Mr. Monzon, are you taking the  
25 position that Commissioner Fahlgren did not understand



1 the distinction between a guideline and a plan?

2 Isn't it clear that at page 8-20

3 Commissioner Fahlgren fully understands the distinction  
4 that the Minister of Natural Resources made at that  
5 time between a guideline and a plan, and he is taking  
6 the position after due consideration and after "x"  
7 years of hearings, that the guidelines, not the plans,  
8 are an unacceptable basis for decision making in the  
9 north?

10 Isn't that the thrust of the paragraph?

11 A. That's certainly the thrust of the  
12 paragraph, Mr. Castrilli. My understanding was you  
13 asked me if I agreed with that and I indicated that I  
14 agreed with the interpretation that the Minister made  
15 in 1983.

16 Q. And Commissioner Fahlgren would, of  
17 course, have had an opportunity to consider the  
18 Minister's position as well?

19 A. Yes, he would.

20 Q. Thank you. So it is clear that you  
21 and Commissioner Fahlgren disagree?

22 A. On that point, yes, sir.

23 THE CHAIRMAN: Well, it may also be clear  
24 that Commissioner Fahlgren and the Minister may  
25 disagree as well?

1 MR. CASTRILLI: That is obviously  
2 something that arises as well.

3 Q. Mr. Monzon, isn't it also true that  
4 Commissioner Fahlgren was concerned that there was a  
5 need for an external constraint to these guidelines as  
6 might be provided through the Environmental Assessment  
7 Act?

8 A. I believe that Mr. Fahlgren had a  
9 view relative to the use of the -- relative to the  
10 relationship of the guidelines under the Environmental  
11 Assessment Act, yes.

12 Q. And that view is as I just stated it?

13 A. I am not sure if I would use the term  
14 'constraint'. Mr. Fahlgren may have used it in his  
15 report, I am not aware of....

16 Q. He uses it in the report in the next  
17 sentence on the same page I just referred you to.

18 "The overriding discretion in the  
19 Ministry in its..." constraint "...and  
20 management of..." public lands "...must  
21 be subject to constraint."

22 Do you agree with that proposition?

23 A. "The overriding discretion in the  
24 Ministryr in its control and management  
25 of Crown lands must be subject to

1 constraint."

2 Certainly, if he is referring to the  
3 notion that a land use plan is a decision-making  
4 document and is something undertaken by the  
5 bureaucrats, then, yes, I would agree.

6 But that would be -- in my view, that  
7 would be in agreement with Mr. Pope's assertion in  
8 1983.

9 Q. Mr. Monzon, it is clear in that  
10 paragraph that Commissioner Fahlgren understands the  
11 distinction between a plan and a guideline and he is  
12 using the term guideline and not plan, and it is his  
13 position with respect to guidelines that are set out in  
14 that paragraph; would you not agree?

15 A. Yes, I would agree.

16 Q. So it is clear that he understands  
17 what he is saying. The question is: What is your  
18 position with respect to that comment in the last  
19 sentence?

20 A. I would make the same response that I  
21 did earlier in terms of the statement made by the  
22 Minister in 1983, that decision making is not something  
23 undertaken by public servants through a land use  
24 planning process.

25 Q. Mr. Monzon, at page 15 of your -- not

1 page 15, page 17, you refer to a number of guidelines  
2 and at Document 8 you actually include an example of  
3 one, the Wawa District Guidelines?

4 A. Yes, that's correct.

5 Q. Would it be fair -- sorry, do you  
6 have the page?

7 A. I am sorry, I have page 17. Do you  
8 want me to go...

9 Q. Please turn to Document 8 which  
10 commences at page 90.

11 A. Yes.

12 Q. Would it be fair to say that this  
13 particular document was included in your evidence  
14 because you regard it as a typical example of the  
15 guidelines produced under the land use planning  
16 process?

17 A. Yes, it is an example.

18 Q. Now, were you responsible for its  
19 preparation or did you oversee its preparation?

20 A. I was not responsible for it. I was  
21 generally responsible for the co-ordination of the  
22 preparation of the documents across the north, but not  
23 responsible for a specific document.

24 Q. Would it be fair to say that this  
25 particular guideline, the Wawa District Guideline, is a



1 model product of the Ministry's land use planning  
2 process?

3 A. Is it a model? Is it the best? It  
4 serves as an example as the way that most of the  
5 documents are structured and put together. It is  
6 consistent with the way the whole exercise was handled  
7 across the north.

8 Q. Page 98 -- sorry, let me...

9 The second column, where you outline --  
10 or where the document outlines that the document has no  
11 legal status.

12 Can you confirm for me that in  
13 unorganized territory in Crown land there is no  
14 applicable statute with respect to policies and  
15 procedures for the Ministry's land use planning  
16 process?

17 A. Yes, there is no single statute.

18 Q. Let me put it this way: Are you  
19 aware of Commissioner Fahlgren's conclusion that there  
20 is no specific legislative mandate for the entire  
21 \$5-million land use planning exercise that MNR embarked  
22 on in the last decade?

23 A. Yes, I am aware of his conclusion.

24 Q. And is it the Ministry's position  
25 that Commissioner Fahlgren is wrong in that too?

1                   A. Again, I would have to go back to the  
2 point that the Minister of Natural Resources made when  
3 he appeared before the Commission and made the point  
4 that the various pieces of legislation in Ontario that  
5 were the mandate of the Ministry of Natural Resources  
6 provided the Minister with all the authority he needed.

7                   Q. Page 100, the same document, the  
8 first column. The second paragraph in the first  
9 column, the second sentence beginning: "The primary  
10 guideline..."

11                  A. Yes.

12                  Q. "The primary guideline in the  
13 development of options was that all  
14 targets should be achieved."

15                  A. Yes.

16                  Q. Is it your testimony that that is, in  
17 fact, possible?

18                  A. It is certainly the primary guideline  
19 in the development of the options. In doing a plan --  
20 in preparing a land use plan, in this case, the land  
21 use guidelines, the intent was to achieve all of the  
22 objectives.

23                  If those objectives were not capable of  
24 achievement in the various planning options that were  
25 looked at, then one needs to go back and perhaps

1 question the assumptions and the assignment of the  
2 objectives and targets.

3 Q. So if we have two competing targets  
4 on the same land base, they will not both be achieved?

5 A. That certainly is a possibility.

6 Q. Page 101 of the same document. The  
7 first paragraph:

8 "Land use options in Wawa were limited  
9 for several reasons..."

10 And then there are three bulleted items?

11 A. I am sorry, just which paragraph, Mr.  
12 Castrilli?

13 Q. It is the first paragraph, column  
14 one, and it is the last part of the sentence before the  
15 three bulleted items?

16 A. I am sorry, yes.

17 Q. Do you see that?

18 A. Yes.

19 Q. "Land use options were limited for  
20 several reasons..."

21 A. Yes.

22 Q. "...one of which included that land  
23 was already allocated."

24 It is the third bulleted item. Do you see that?

25 A. Yes.

1                   Q.   Would it be fair to say that in Wawa  
2                   there was substantial acceptance, therefore, of the  
3                   existing land allocations before the land use planning  
4                   process began?

5                   A.   I am not sure what you mean by 'land  
6                   allocations'.  Certainly in the Wawa District there was  
7                   significant areas of land in where uses -- or ownership  
8                   or uses had been -- general use had been predetermined,  
9                   or ownership was such that the use to which that land  
10                  would be put, would be the prerogative of the private  
11                  landowner.

12                  I refer specifically, if I might, Mr.  
13                  Chairman, to the map, Exhibit 13, and the Pukaskwa  
14                  National Park which I believe was in the regulation at  
15                  that time, Lake Superior Park, Area No. 4, Pukaskwa  
16                  being land use area No. 3.

17                  In addition, there is substantive area -  
18                  I am going on memory, Mr. Chairman - through much of  
19                  the, I believe, the lower portion of the district and I  
20                  believe also in the area of the district Kabenung Lake  
21                  down through to Michipicoten, that are private  
22                  townships owned by the Algoma Central Railway.

23                  Q.   The second column on the same page,  
24                  the last two paragraphs.  If I understand what's being  
25                  said there, it appears that the MNR district preferred



1 and so-called Option 2 which had the advantages of  
2 directing Crown land recreation activity into smaller,  
3 more manageable areas and several are mentioned there,  
4 including the:

5 "Unique recreational potential of the  
6 treeless fume kill area which extends  
7 north of the Town of Wawa."

8 Can you advise the Board what the source  
9 of the fume kill is?

10 A. Fume kill - and I am not an expert -  
11 but my understanding of fume kill is that it is a  
12 result of the fumes from the sintering plant located at  
13 Michipicoten.

14 Q. Sulphur dioxide?

15 A. Yes, I believe that's the case. I'm  
16 sorry, it is --

17 THE CHAIRMAN: What kind of plant was  
18 that, an asphalt plant?

19 MR. MONZON: No, iron ore.

20 MR..CASTRILLI: Sintering plant.

21 THE CHAIRMAN: Sintering plant.

22 MR. MONZON: Iron ore sintering plant. I  
23 believe it is either Michipicoten or Wawa. I believe  
24 it is Wawa.

25 MR. CASTRILLI: Mr. Chairman, for the

1 record it is referred to in more detail at page 152 of  
2 the document.

3 Q. Mr. Monzon, to the uninitiated it looks  
4 and sounds like, in that paragraph, the Ministry of  
5 Natural Resources is promoting tourism looking at rocks  
6 and wasteland.

7 Would that be a fair impression?

8 A. That would not be my impression, Mr.  
9 Castrilli, it may be the perception of others.

10 Q. Now, page 102 -- to go backwards to  
11 page 101 for a moment, treeless fume kill area. I  
12 presume the source of the treelessness is the fumes; is  
13 that right?

14 A. Yes, I believe that's correct.

15 Q. So what's left there for a tourist to  
16 look at?

17 A. I don't know that I can give you a  
18 detailed account of that. Just let me refer to the  
19 guidelines, if I might.

20 According to the guidelines under Land  
21 Use Intent, the intent talks about increased  
22 recreational opportunities for unique scenic viewing  
23 and study of geological features on the south Canadian  
24 Shield.

25 Q. What page are you referring to?

1                   A. I am sorry, page 152 of the witness  
2 statement, under (b), Land Use Intent, the first four  
3 lines.

4                   There is also reference in there to  
5 improving road access and developing interpretive aids.

6                   Q. Can I refer you to paragraph (a) on  
7 page 152 under the Area Description?

8                   A. Yes.

9                   Q. "The air consists of most of the land  
10 and water within the sulphur dioxide fume  
11 kill that is formed northeast of the iron  
12 ore sintering plant in Wawa."

13                   Now, it seems to me that what MNR is  
14 proposing is that - and you can tell if you look back  
15 at page 101 - is that MNR is directing Crown land  
16 recreation activity into a "more manageable area" which  
17 includes this area which has been decimated by the  
18 fumes; there are no trees there.

19                   Isn't that what treeless means?

20                   A. That's what treeless means. I guess  
21 I would -- might debate your use of the term  
22 'directing'. I think the intent in this sense --

23                   Q. It's not my term, it is the term that  
24 is written on page 101. I didn't write this document.

25                   A. On page 101, Mr. Castrilli, the term

1 directing talks about - if I can quote from the  
2 paragraph:

3 "The option has the advantage in  
4 directing Crown land recreation  
5 activity into smaller, more manageable  
6 areas: the Shabotik area (presently  
7 receiving relatively intensive use), the  
8 newly developing Tik area, and the unique  
9 recreational potential of the treeless  
10 fume kill area which extends north of the  
11 Town of Wawa."

12 So reference in that paragraph is to tree  
13 areas.

14 Q. That's right, and I am talking about  
15 one of those, the treeless fume kill area.

16 A. Yes, I understand that.

17 Q. What is so unique about it?

18 A. I understand that --

19 Q. That it is barren, that it is  
20 wasteland?

21 A. I understand that you are talking  
22 about the one, Mr. Castrilli. I wanted to make it  
23 clear to the Board that the direction of the Crown land  
24 recreation activity was to more than one area.

25 Q. Including the treeless area?



1 A. Including the treeless area.

2 Q. Well, that's what my questions are  
3 directed to, not to the other two areas.

4 Why would MNR direct --

5 THE CHAIRMAN: Mr. Castrilli, I think, in  
6 fairness, the witness is trying to put what he  
7 understands the word "directing" in that paragraph to  
8 be in context; it refers to more than just one area.

9 MR. CASTRILLI: I understand that and I  
10 think that's clear, but I think it is also clear that  
11 it is intended to direct the Crown land recreation  
12 activity to areas including the treeless fume area.  
13 I think is very clear.

14 THE CHAIRMAN: Fine, he already stated  
15 that. He stated that it includes the treeless area, he  
16 has also stated that it includes two other areas which  
17 is a fair representation, I think, of what that  
18 paragraph states.

19 MR. CASTRILLI: I have no difficulty with  
20 him adding that qualification, but it is clear from the  
21 paragraph - and I believe he has already indicated that  
22 on the record - that they are in fact directing the  
23 recreational activity to an area that includes what is  
24 described in the document as a unique and --

25 THE CHAIRMAN: But he stated that, it is

1 on the record. I think you have made your point.

2 MR. CASTRILLI: All right.

3 Q. I just wanted from Mr. Monzon what it  
4 is, if he knows, is so unique and what the recreational  
5 potential is of such an area.

6 MR. MONZON: A. The interesting aspects  
7 of that area would be the evidence of the geological  
8 features and the rock formations that have been  
9 exposed.

10 Q. Exposed by the sulphur dioxide?

11 A. Yes.

12 Q. Thank you. Page 102.

13 Now, this is under a heading Response to  
14 Planning Options, and it actually goes over on to two  
15 pages and the bulleted items there appear to be 25 or  
16 so areas of public concern, and then on page 103 there  
17 are some further areas of public concern.

18 I would like to direct your attention to  
19 the last paragraph on page 103. The first sentence:

20 "The continuing issue of the access  
21 provided to remote inland lakes through  
22 increased forest access road development  
23 in the northern part of the district has  
24 not been resolved."

25 Mr. Monzon, just for my information, can

1       you confirm -- sorry, do you have that page?

2                   A. Yes, I am sorry, I do.

3                   Q. Can you confirm for me that the  
4       concern expressed in the sentence I just read into the  
5       record is that once a logging road is built into a  
6       remote lake area there is a considerable pressure to  
7       cut the timber surrounding the lake?

8                   Is that one factor that's being expressed  
9       there?

10                  A. That's one of the issues, yes.

11                  Q. Thank you. The guidelines confirm  
12       that that problem or that issue had not been resolved;  
13       is that right?

14                  A. Yes, that's correct. As you note,  
15       there is -- the Board should note the paragraph goes on  
16       to say:

17                         "...the access roads and modified  
18                         management area policies presented in  
19                         the document provide a framework  
20                         for the future planning by the  
21                         resource..."

22       In this case.

23                         "...(timber) companies..."

24       I am sorry, timber is bracketed:

25                         "...tourist outfitters, individual

1 sport fishermen and Ministry resource  
2 managers."

3 The point being that there is a framework  
4 there which show conflicts can be resolved as they  
5 arise.

6 Q. Yes, but you would also agree that it  
7 is clear the paragraph is stating that the issue has  
8 not been resolved?

9 A. Oh, yes, absolutely. And in fact  
10 certainly one of the intentions of the document is to  
11 identify where conflicts are going to -- are likely to  
12 occur and, where possible, to put forward some  
13 strategies and methodologies for resolution of those  
14 conflicts later on.

15 Q. That's fine, we will be getting to  
16 that.

17 Page 105, it is the third paragraph  
18 starting "Acid rain...." Do you see that?

19 A. Yes, I do.

20 Q. The guideline indicates that:  
21 "Acid rain causes environmental  
22 effects..."

23 and that MNR continues to be concerned over the effects  
24 of acid rain on vegetation and fisheries habitat?

25 A. Yes.



1                   Q. Can you confirm for me that in this  
2 paragraph there is no indication of how acid rain might  
3 affect the target for wood production in Wawa?

4                   A. Certainly there is no indication in  
5 that paragraph as to the effects of acid rain on that  
6 target.

7                   Q. Thank you. Page 106, under the  
8 heading Multiple Use. Do you have that page?

9                   A. Yes, I do.

10                  Q. There are some specific strategies  
11 referred to there. The second one states, in part:

12                   "...ensuring that the withdrawal of...  
13 productive forest land from forest  
14 management are minimized."

15                  Do you see the second bulleted item on  
16 Column 1 under the heading Some Specific Strategies?

17                  A. I am sorry:

18                   "...the withdrawal of... productive  
19 forest land from forest management are  
20 minimized"?

21                  Q. Yes.

22                  A. Yes.

23                  Q. I've just emphasized the reference to  
24 forest, not to mining?

25                  A. Yes, all right.

1 Q. Would you agree with me that meeting  
2 this goal could go along way toward resolving the issue  
3 of forest road access to remote inland lakes in favour  
4 of developing the access roads?

5 A. If you withdrew the productive forest  
6 land from forest management, would that go a long way  
7 to...?

8 Q. If you minimized withdrawal of  
9 productive forest land?

10 A. If you minimized withdrawal.

11 Q. Would that not go a long way toward  
12 resolving the issue of forest road access to remote  
13 inland lakes in favour of developing the access roads?

14 THE CHAIRMAN: Does that make sense?

15 MR. CASTRILLI: It will become clear in a  
16 moment, Mr. Chairman. Perhaps I could --

17 MR. MONZON: I am afraid I don't  
18 understand.

19 MR. CASTRILLI: Q. It will become clear  
20 in a moment.

21 Page 108, under the heading Access Roads,  
22 the following statement, sir, is said to be the basics  
23 of the Ministry of Natural Resources' access road  
24 policy. The first bulleted item is:

25 "Access roads will be built to stimulate

1                   development and use of Ontario's natural  
2                   resources."

3                   Mr. Monzon, would you agree with me that  
4           this section promotes road access and building of roads  
5           in spite of the public concerns raised earlier in the  
6           document, including the public concern that had been  
7           raised with respect to this matter being unresolved?

8                   Doesn't this paragraph suggest that the  
9           issue has in fact been resolved in favour of building  
10          more access roads?

11                  A. My interpretation of that statement  
12          would be that roads -- access roads will be built for  
13          very particular purposes, in this case to stimulate  
14          development and use of Ontario's natural resources.

15                  Q. Including possibly arrival of some of  
16          these roads to remote inland lakes. Is that possible?

17                  A. I am sorry, what was the -- I missed  
18          a word in there.

19                  Q. Would it also be possible that the  
20          stimulation of development of access roads could indeed  
21          be putting pressures on the remote inland lakes that  
22          the Ministry's document earlier indicated was an  
23          unresolved issue?

24                  A. Certainly if those access roads are  
25          constructed in a manner such that there is no

1 consideration for the values at stake relative -- in  
2 and around those inland lakes, that would be the case.

3 But I think the policy goes on to -- or  
4 the statements go on to indicate -- in fact, the second  
5 bullet indicates that:

6 "...roads will take into account  
7 tourism requirements for  
8 isolation...outdoor recreation  
9 opportunity for residents of Ontario  
10 and...the general public."

11 Q. Page 114, Column 1, this is under the  
12 general heading of Fires.

13 Down at the bottom of the page there is a  
14 bulleted heading called Clearcuts. Would you agree  
15 with me that -- sorry, do you have the page?

16 A. I am sorry, yes, I do.

17 Q. Would you agree with me that the sum  
18 and substance of the comment under that heading is that  
19 a large part of the northern half of the Wawa District  
20 has been clearcut, the result has been large areas of  
21 slash which constitute a fuel that can result in a  
22 major fire hazard.

23 Isn't that what's being said there,  
24 essentially?

25 A. I think what is being said is that a



1 large part of the area has been cut-over and  
2 regenerated and that these activities have resulted in  
3 large areas of plantation slash.

4 I make the distinction between cut-over  
5 and clearcut; there is a difference. If one takes the  
6 words out of context, one could get the impression that  
7 the entire north half of the Wawa District was  
8 clearcut, and that is certainly not the case.

9 The intention here was to indicate that  
10 in that part of the district there are areas of  
11 cut-over and, as a result, there are areas of slash and  
12 there are areas of regeneration, and that a fire in any  
13 one of those areas has a potential to become a major  
14 problem because of the fuel type.

15 It takes so many years for the slash to  
16 decay to the point that it is no longer a - and I am  
17 out of my depth here, Mr. Chairman - but a major risk  
18 in terms of the fuel type.

19 Q. Mr. Monzon, isn't the bulleted  
20 sub-heading Clearcuts?

21 A. Yes, that's correct.

22 Q. So there is no taking of anything out  
23 of context, that bulleted item is about the effects  
24 clearcuts have had; isn't that right?

25 A. Yes, the cut-over areas in the north

1 part of the district - and I would be out of my depth  
2 here, Mr. Chairman - certainly a number of those areas  
3 would have been clearcut, but clearcuts of different  
4 sizes.

5 And I think it would be misleading for  
6 the Board to have the impression that the entire half  
7 of the district has been clearcut, and that is the  
8 point I am trying to make.

9 Q. Let's move on to Column 2, the same  
10 page, under the heading Access Roads.

11 Would you agree with me that the sum and  
12 substance --

13 A. Sorry, Mr. Castrilli, I am not with  
14 you yet.

15 Q. Sorry, on page 114, the second  
16 column, the bottom of the page, there is a bulleted  
17 sub-heading Access Roads?

18 A. I am sorry, yes.

19 Q. Would you agree with me that the sum  
20 and substance of the comment under that heading is that  
21 there is an increased fire hazard in the area due to  
22 the growing fire access road network?

23 A. Yes, that's correct.

24 Q. Would you agree with me that  
25 notwithstanding this at page 108, the Ministry of

1 Natural Resources is promoting access road development;  
2 is that correct?

3 A. Promoting access road development for  
4 specific reasons.

5 I think it is fair to point out though,  
6 and the Board should be aware, that in terms of the  
7 general issue of fire protection, certainly public  
8 education is a very major part of that exercise and  
9 there are significant public education programs aimed  
10 directly, not only at residents, but at tourists who  
11 enter the area, and are carried out through things like  
12 signs, through advertisements, and stamping of messages  
13 on milk cartons where tourists and people buy  
14 recreational supplies.

15 So there is an attempt to make the  
16 general public and the tourists in the area more aware  
17 of the problems and safety factors that they should be  
18 observing relative to fires.

19 Q. You would agree that the paragraph is  
20 stating that one result of the growing forest access  
21 road network is an increased fire risk?

22 A. Yes, sir.

23 Q. Thank you. Page 116, this is under  
24 the heading of Target for Sport Fishing for the year  
25 2000.

1 A. Yes.

2 Q. And the figure there is 312,000  
3 kilograms of sport fish per year by the year 2000.

4 In the second column on that page under  
5 the paragraph that commences:

6 "The theoretical annual yield..."

7 Do you see that?

8 A. Yes.

9 Q. It is stated that: "The figure --

10 MR. FREIDIN: What page?

11 MR. CASTRILLI: It is still the same  
12 page, 116.

13 Q. Do you see there that it is stated  
14 that:

15 "This figure of 312,000 kilograms is more  
16 than six times the present harvest and it  
17 also assumes the maintenance of present  
18 water quality."

19 Do you see that?

20 A. Yes.

21 Q. Will you advise the Board of how the  
22 target for the year 2000 can be more than six times the  
23 present harvest and assume the maintenance of present  
24 water quality when on the same page, Column 1, 116, the  
25 District Land Use Guideline also admits that



1 acidification of waterways is a serious issue and that  
2 within 10 years a large number of cold water fisheries  
3 will be lost in the district?

4 How do those two things go together, Mr.  
5 Monzon?

6 A. I am sorry, a large number of cold  
7 water fishries will be lost... That's on page...?

8 Q. That's also on page 116.

9 MR. FREIDIN: Perhaps you will direct him  
10 to the section you are referring to.

11 MR. CASTRILLI: Q. Do you see the  
12 paragraph beginning at the bottom of the page, Column  
13 1?

14 A. Yes:

15 "Most of the District's inland  
16 lakes..."

17 Q. I am sorry, I went too far down the  
18 page.

19 A. Oh:

20 "The gradual acidification of  
21 waterways..."?

22 A. Yes.

23 Q. It says:

24 "The gradual acidification of  
25 waterways..."

1 And then if you drop down to the end of the sentence

2 "...is a serious issue."

3 A. Yes.

4 Q. Then if you go up to the second  
5 column on page 116, end of the first paragraph on that  
6 page it begins -- or it ends:

7 "...that within 10 years a large number  
8 of cold water fisheries will be lost in  
9 the District."

10 Do you see that?

11 A. Yes, that's correct.

12 Q. Do you want me to repeat the question  
13 now that you have found the page? Would that help?

14 A. That would help.

15 Q. Now, it is stated on that page that  
16 the figure of 312,000 kilograms of sport fish by the  
17 year 2000 is more than six times the present harvest  
18 and that it also assumes the maintenance of present  
19 water quality.

20 My question to you is: How can the  
21 target for the year 2000, which is more than six times  
22 the present harvest and which also assumes the  
23 maintenance of present water quality, have a target  
24 that high when, on the same page, the guideline is  
25 admitting that acidification of waterways is a serious

1 issue and that within 10 years a large number of the  
2 cold water fisheries will be lost in the district?

3 Isn't that target completely without  
4 foundation?

5 A. Without the benefit of having looked  
6 at this in detail, my sense would be that certainly  
7 with respect to the paragraph that you referred to:

8 "In terms of the gradual acidification of  
9 waterways and terrestrial systems..."

10 And ending:

11 "Where it is currently believed that  
12 within 10 years a large number of cold  
13 water fisheries will be lost in the  
14 District."

15 My sense is that that reference is not only the  
16 problems associated with acid rain, but also the  
17 natural geological setting in which the lakes are  
18 found.

19 I am not a biologist and I would not be  
20 able to comment any more than that. But my general  
21 understanding is, depending on the type of geological  
22 setting, in terms of where the lakes are found, that  
23 will have an effect on the -- there will be a natural  
24 acidification of some of those waterways because of the  
25 geological setting.

1                   So I think that's part of it.

2                   THE CHAIRMAN: Yes, but regardless of  
3                   what the cause is, how can you assume that the present  
4                   water quality when, due to natural forces or otherwise,  
5                   certain lakes are going to be lost and the numbers of  
6                   fish will be decreased?

7                   I mean, how can you increase it six times  
8                   and assume the present water quality, when you are  
9                   stating that, for whatever reason, acid rain will  
10                  continue to be a problem and it will take certain lakes  
11                  out of production?

12                  MR. MONZON: As I was saying, Mr.  
13                  Chairman, I don't recall right off the bat the  
14                  rationale for this part of the statement.

15                  I am not sure whether there are  
16                  relationships in Table 3 which indicate the total  
17                  productive inland water area and the total fish  
18                  production in terms of 100,000 thousand kilograms per  
19                  year of 891 as opposed to the present yield of 312.

20                  I think that's an area that we would want  
21                  to take some time to examine and see if we can  
22                  determine what precisely the rationale.

23                  THE CHAIRMAN: I do not think the numbers  
24                  are the problem, I think the problem is is the fact  
25                  that you are assuming the maintenance of present water



1       quality when, in another area, you are indicating that  
2       maintenance will be hard -- maybe not impossible, but  
3       hard to meet.

4                   MR. MONZON:  And I guess I am not sure  
5       whether or not they refer to the District in general or  
6       they are referring to the specific area.

7                   Some of the lakes in the Wawa area are  
8       quite small and it may be that the reduction in water  
9       quality in those specific lakes is such that, given the  
10      context of the District overall, there are -- the  
11      overall effect is, in essence, insignificant.

12                  I would have to take -- we would have to  
13      take some time and examine that in more...

14                  MR. MARTEL:  Could you get for us a  
15      reason as to why the geological setting is going to  
16      reduce the number of fish, given that - if that were  
17      the case, regardless of all other factors - lakes would  
18      be depleted of fish through the natural setting?

19                  I ask that question based on other  
20      experiences I have had and what arguments have been  
21      that it was other than acid rain, for example, from  
22      Englehart killed some of the lakes in the Kuwani Lake  
23      area as it was a geological setting.

24                  I never quite believed it in those days,  
25      but I can't for the world understand it, because there

1 are two sets of views; the geological setting really  
2 doesn't do much damage, it is other ecological factors.

3 MR. MONZON: I am certainly not trying to  
4 suggest to the Board that the aspect of acid rain is  
5 not a serious one and will have an effect on the lake.

6 I think we can attempt to provide -- we  
7 will provide you with some research information, papers  
8 that speak to your issue, and that being the geological  
9 aspect and what happens naturally.

10 MR. CASTRILLI: Mr. Chairman, just for  
11 the record --

12 MR. MONZON: That's well outside my area  
13 of expertise.

14 MR. MARTEL: That's why I am asking if  
15 you can get the information for us, Mr. Monzon.

16 MR. CASTRILLI: Q. Mr. Monzon, if you  
17 are going to be doing further homework in this area,  
18 the burden of my question is: Isn't the target  
19 unrealistic in light of the matters set out at page  
20 116, and you can take that under advisement.

21 MR. MONZON: A. Yes, thanks.

22 Q. Page 117, this is again Column 1.

23 I believe there you are referring to Al  
24 lakes and, I understand from the definition, that such  
25 lakes are totally surrounded by Crown lands and have

1       excellent naturally reproducing trout populations.

2                       And I gather these are the best category  
3       lakes for trout production?

4                       A.   That is my understanding, yes.

5                       Q.   Thank you.   The bulleted Item 4 under  
6       that heading --

7                       MR. FREIDIN:   What page?

8                       MR. CASTRILLI:   Sorry, same page, 117.

9                       Q.   Again, under the heading of A1 lakes,  
10       refers to limiting access?

11                      A.   Yes.

12                      Q.   I presume there you are referring to  
13       limiting road access?

14                      A.   Limiting access, period.

15                      Q.   Would that --

16                      A.   Road access is part of it.

17                      Q.   Road access would be a part of it.

18       Thank you.

19                      In bulleted Item 2 under the same heading  
20       you refer to forest management activities -- or  
21       controlling forest management activities within 120  
22       metres of the shorelines of such bodies of water, A1  
23       lakes.

24                      Can you really say that you are limiting  
25       access, including road access, when you are letting

1 people cut to within 120 metres of the shoreline?

2 A. Well, simply by the construction of  
3 the road there is -- that by itself does not  
4 automatically assume that the area is accessible in  
5 each and every -- to each and every person.

6 Depending on the management strategy it  
7 follows -- that is followed, it may be that the road is  
8 closed to other than forestry operations and once the  
9 operations are done, the road in fact may be ripped up  
10 or rendered impassable for entrance and use.

11 Q. But are you saying that -- can you  
12 say you are limiting access - and I am talking about  
13 road access now - when you are letting people cut to  
14 within 120 metres?

15 A. If you define access as road access  
16 or the construction of a road, then yes, I would agree  
17 with you.

18 I would define access as the opportunity  
19 for people to, in this case, come into and be able to  
20 fish in this particular type of lake. And, in that  
21 case, depending on how the road is managed, the  
22 question of people access may be well controlled.

23 Q. Page 119, column 2. This is under  
24 the heading of Forest Management, both under the  
25 heading Broad Objective and also under the heading



1 Objectives.

2 Would you agree with me that the MNR main  
3 objective of supplying wood sufficient to meet  
4 estimated industry requirements is in fact an objective  
5 set by the industry?

6 A. Set by the industry?

7 Q. Yes.

8 A. No, it is set by the Ministry of  
9 Natural Resources. I am not sure I understand your  
10 comment.

11 Q. Well, look at the plain words on the  
12 page, Mr. Monzon, who is providing the estimates of  
13 industrial requirements, the Ministry or the industry?

14 A. The estimates are -- oh, I see. The  
15 Ministry makes calculations relative to industry demand  
16 and they do that in consultation with the forest  
17 industry.

18 Q. So the industry gives you a number?

19 A. A number is arrived at, arrived at  
20 jointly.

21 Q. Are you saying then the number the  
22 industry gives you is modified by consultation with the  
23 government?

24 A. I am saying - and I am not familiar  
25 with the specifics as to how this is worked out - but I

1 am saying it is not a situation whereby the Ministry of  
2 Natural Resources will talk to a timber company and  
3 say: What are the industrial requirements, thank you  
4 very much, good-bye, go away and do a timber management  
5 plan. It is far more complicated than that.

6 Q. Can I ask you then what evidence you  
7 provided to the Board regarding the estimates of  
8 industry's wood requirements that were modified by the  
9 government - and we can limit it to just the numbers  
10 that appear at the bottom of page 118 for this  
11 particular question - 894,000 net merchantable cubic  
12 metres of conifer and 808,000 net merchantable cubic  
13 metres of hardwood.

14 Can you provide the Board with the  
15 numbers the industry gave the Ministry and, I presume  
16 the numbers that resulted are numbers that are listed  
17 there?

18 MR. FREIDIN: Mr. Chairman, I think --  
19 you know, information is going to be led about how  
20 production objectives are set at the management unit  
21 and how discussions take place between the industry and  
22 MNR representatives in relation to that and how the  
23 Ministry approaches regulating or limiting, where  
24 necessary, the amount of cutting which goes on.

25 What he is asking for, it covers a whole

1       expanse of evidence from the panels. I know he wants  
2       as much information as we can get now, and I sort of  
3       understand that, but, you know, we are at a hearing and  
4       the proponent has a very onerous obligation to call  
5       evidence in relation to all of these matters.

6                       And to start trying to deal with a broad  
7       issue that he is raising now without allowing us to  
8       present our case, as indicated in the outline, where we  
9       are going to do it in a very logical and orderly  
10      fashion so we can address all of these points in some  
11      sort of order so it can be understood, it is I think  
12      more contrary to what is in the environmental  
13      assessment.

14                    THE CHAIRMAN: Mr. Freidin, with respect  
15      to the question asked and the information asked to be  
16      provided, Mr. Castrilli has asked the witness: How are  
17      these figures set. The witness has replied they are  
18      set in consultation with the industry and that is not  
19      to say the industry just provides a number and the  
20      Ministry accepts it and goes away and formulates a  
21      timber management plan.

22                    He further asked in this specific  
23      example: Here is a figure set out on page 119, can you  
24      just tell us what the figure provided by the industry  
25      was, I take it, for this one example.

1 MR. CASTRILLI: Yes.

2 THE CHAIRMAN: And I take it that you  
3 want that information to see whether the ultimate  
4 timber management plan corresponds with that figure or  
5 has has been amended in some way, supposedly as a  
6 result of consultation.

7 Basically, I think - and I hope you are  
8 not going further than this - you just want it for this  
9 one example?

10 MR. CASTRILLI: Yes, that's right.

11 THE CHAIRMAN: Now, whether or not it  
12 corresponds with that figure our not, I am not sure how  
13 far that takes you, other than the fact that this is an  
14 example perhaps, that either does correspond or there  
15 has been some modification by the Ministry.

16 And I understand from Mr. Freidin they  
17 will be adducing more evidence later on on how timber  
18 management plan figures are actually arrived at.

19 Is that difficult, witness, for you to  
20 produce this one example, the figures for this one  
21 example?

22 MR. MONZON: Mr. Chairman, I think in  
23 this instance, as with most of the targets in the  
24 District Land Use Guidelines it would be very difficult  
25 given that these targets were arrived at over a period



1 of probably 1980 to 1983, and in terms of the tracking  
2 of information and what is available and on the files,  
3 I think it would be very difficult, if not impossible,  
4 to retrieve.

5 THE CHAIRMAN: Well, Mr. Castrilli, I  
6 think if it is going to take an exceptional amount of  
7 time to really track this specific information for this  
8 example, I am not sure it is worth it in terms of any  
9 benefit you can derive from it.

10 Would you consider waiting until the  
11 Ministry produces more information in terms of how they  
12 formulate timber management plans in general?

13 MR. CASTRILLI: Perhaps I can ask what  
14 panel Mr. Freidin is referring to, first of all?

15 MR. FREIDIN: 15.

16 MR. CASTRILLI: Mr. Chairman, the problem  
17 I have is that --

18 MR. FREIDIN: There will be some  
19 general -- this is what I am saying, it is a number of  
20 panels.

21 In panel No. 3 you will be getting an  
22 explanation of what sustained yield means, you will be  
23 getting a description of yield regulations allowed  
24 maximum allowable completion, the things that the  
25 Ministry do in terms of regulating the amount of wood

1       which is cut.

2                       Now, that will melt into the evidence  
3       later about other things. So I guess that's the first  
4       time you will hear, sort of, evidence on this topic,  
5       but the whole picture --

6                       THE CHAIRMAN: Mr. Castrilli, I think it  
7       is unreasonable at this time to say to the witness: Go  
8       back and try and track the background information to  
9       support this one figure, since he has indicated it took  
10      place over a number of years.

11                      And if it were numbers that were readily  
12      retrievable, the Board might consider saying: Well,  
13      provide the figures for this one example.

14                      MR. CASTRILLI: Mr. Chairman, the problem  
15      I have is: How else can any of the parties to these  
16      proceedings test the numbers that appear in this  
17      document, any other, if the response we get is the one  
18      that we just heard from Mr. Freidin.

19                      I mean, what am I to make of these  
20      numbers, how am I supposed to test them? I mean, I am  
21      content to wait until Panel 15, if I can know that I  
22      will have an answer to that question and other  
23      questions by then, but I don't know that that is what  
24      Mr. Freidin is saying.

25                      THE CHAIRMAN: Are you going to provide,

1 Mr. Freidin, any way in which, as Mr. Castrilli  
2 indicates, he can test numbers such as this as is  
3 contained in the Wawa Plan?

4 MR. FREIDIN: The evidence -- I think the  
5 answer is no.

6 The evidence of this witness was that in  
7 terms of what actually happens on a management unit  
8 and, therefore, what happens in terms on all management  
9 units in terms of how much is cut, is not driven by nor  
10 is there any connection with the production objective  
11 in the District Land Use Guideline.

12 The evidence is, as I understand it, that  
13 this target in the District Land Use Guideline is a  
14 production objective which was determined by looking at  
15 the capacity and capability of the land, it is a  
16 benchmark against which the Ministry can assess how the  
17 district is doing as a whole.

18 There is no connection -- that is the  
19 Ministry's evidence, there is no connection between the  
20 production of a target in the District Land Use  
21 Guideline and the decision making as to how much will  
22 actually be handled at the management unit level.

23 That is what the Ministry's evidence has  
24 been so far and we will expand on that as we go along  
25 and make it clearer, if it is not clear yet.

1 THE CHAIRMAN: Well, is there any basis  
2 upon which Mr. Castrilli, or others, could compare the  
3 figures put forward by the industry and try and see if  
4 there is any relationship between the figures put  
5 forward by the industry and what the ultimate target  
6 figures are that the Ministry arrives at in its plans?

7 MR. FREIDIN: You are talking now in an  
8 individual timber management plan?

9 THE CHAIRMAN: Well, in this case for one  
10 and I think the witness has indicated that might be  
11 tough to track, but in any case.

12 MR. FREIDIN: Can I advise you. I think  
13 that information will be part of Panel No. 15, but can  
14 I, please, confirm that part and advise you after the  
15 break?

16 THE CHAIRMAN: Okay. If Mr. Freidin  
17 comes back, Mr. Castrilli, and indicates that they will  
18 be prepared to provide that information as part of  
19 Panel 15, would you be content?

20 MR. CASTRILLI: Yes, I would.

21 THE CHAIRMAN: Very well.

22 MR. CASTRILLI: Thank you, Mr. Chairman.

23 Q. Mr. Monzon, page 124, again, the  
24 left-hand column under the heading Discussion -- sorry,  
25 do you have that page?



1 MR. MONZON: A. Yes, I do.

2 Q. Would you agree with me that the  
3 discussion there confirms that the expanding road  
4 access system can also adversely impact commercial  
5 outpost camp operations?

6 A. Yes, it does.

7 Q. And would you agree that that is  
8 another problem with the logging road access system  
9 identified there?

10 A. I would -- yes, I will agree.

11 I think this is essentially another  
12 indication of the same issue which was discussed  
13 earlier and, again, I believe points up the value of  
14 documents such as these and laying out on the table, as  
15 much as possible, the conflicts that have to be dealt  
16 with in later planning exercises.

17 Q. And you would agree with me that the  
18 expanding road access system is resulting in few  
19 remaining opportunities for road, inaccessible  
20 commercial sites for fishing and hunting?

21 A. The words in the document indicate  
22 "can adversely affect", and again I would indicate that  
23 depending on the management techniques that are used in  
24 the construction and the management of access on those  
25 roads, there certainly could be adverse effects.

1                   On the other hand, those adverse effects  
2                   can probably be minimized.

3                   Q.   On the same page --

4                   MR. FREIDIN:   What page?

5                   MR. CASTRILLI:   Q.   Sorry, page 124,  
6                   under the heading Wildlife Management.   It generally on  
7                   that page indicates that wildlife management is  
8                   conducted -- I'm sorry, at the bottom of the page:

9                   "Conducted on the basis of wildlife  
10                   management units and not on the basis of  
11                   administrative districts."

12                   A.   Yes.

13                   Q.   That's a matter we've talked about  
14                   from time to time over the last three days.

15                   Would you agree with me that the authors  
16                   of the Wawa Guidelines are admitting that the adequacy  
17                   of their baseline census data is undermined because  
18                   every one is using a different map?

19                   A.   I don't see any indication to that  
20                   effect.

21                   Q.   Look at the words, the last  
22                   paragraph:

23                   "The determination of moose populations  
24                   and moose harvest targets is qualified by  
25                   the following limitations:   The fact that

1 wildlife management is conducted on the  
2 basis of wildlife management units, not  
3 the area of the administrative district."  
4 Isn't that the same problem we've  
5 identified previously, and isn't that an admission by  
6 the Wawa District managers that that is a problem in  
7 their district?

8 A. I believe they are indicating that  
9 the determination of the population and the targets  
10 have to be qualified, based on the basis of the fact  
11 that the unit boundaries -- the management unit  
12 boundaries are not consistent with the administrative  
13 district boundaries.

14 We have indicated before that that's the  
15 case certainly with a number of forest management units  
16 and it is an issue that has to be dealt with.

17 Q. So how much confidence can the public  
18 have in reading this document when it is clear that the  
19 targets have to be qualified by the limitations I just  
20 outlined?

21 A. I think the term 'qualified'  
22 indicates that adjustments are made relative to the  
23 fact that the unit boundaries are not the same and my  
24 sense would be that the public could be quite  
25 confident. There may be other perceptions though.

1                   Q. They can be quite confident that the  
2 target numbers have to be qualified. Well, how  
3 qualified?

4                   A. Qualified to the extent that the  
5 population number that appears in the target is a fair  
6 representation of the moose herd within the  
7 administrative district.

8                   Q. And you are saying it is a fair  
9 representation. That's not what the authors of the  
10 document are saying, they are saying the target numbers  
11 have to qualified because of the limitations I just  
12 outlined; isn't that right?

13                  A. They are saying the target numbers  
14 have to be qualified or assisted because of the fact  
15 that within a district there may be two or three  
16 wildlife management units and, therefore, it is not  
17 possible to add up the population of all of those  
18 management units and apply them to an administrative  
19 district.

20                   And they will have to make some judgments  
21 based on data and whatever else to determine the number  
22 of moose within a particular wildlife management unit  
23 that is within or without a particular district.

24                   It would be the summation of those  
25 numbers of moose that fall within the administrative



1 district that would make up the district target.

2 And I would again state that my sense is  
3 that that's a fair approximation.

4 Q. My sense - and you can confirm or  
5 deny this - is that the authors of the document don't  
6 have confidence in the number because they have to  
7 qualify it that way; isn't that correct?

8 A. I think we probably have a  
9 disagreement in terms of the unease of the authors of  
10 the document.

11 Q. Well, let's see if we can look at  
12 some more unease on the next page under black bears,  
13 page 125.

14 A. Yes.

15 Q. The column on the right-hand side of  
16 the page.

17 A. Yes.

18 Q. It is under the heading of Black Bear  
19 Discussion.

20 Can you confirm for me that the authors  
21 there intend that the bear kill should double, but in  
22 the next paragraph they do not know the number of bears  
23 they have now?

24 A. They are saying, until recently  
25 reliable estimates of bear numbers in the district were

1       unavailable and better harvesting estimates are being  
2       obtained now since the introduction of the bear  
3       licences in 1980.

4               So presumably they have a number of  
5       years' of data based on the licences and they have some  
6       estimate of population prior to that period of time.

7               Q.   Mr. Monzon, in that paragraph there  
8       are two qualifications:   Firstly, until recently  
9       reliable estimates were unavailable; and, secondly,  
10      data are being obtained.

11              So how do they come up with the number of  
12      300 bears to be harvested with that kind of limitations  
13      in the data?

14              A.   They would have made a judgment based  
15      on the data available relative to the potential of the  
16      district and the population of animals in the district.

17              Q.   Let's move on to page 126.   Let's  
18      talk about targets some more.

19              This is under the general heading of  
20      Commercial Fur, paragraph (h).   Do you have that, at  
21      the bottom?

22              A.   Yes, I have that.

23              Q.   Can you confirm for me that the  
24      Ministry of Natural Resources wants to increase the  
25      annual harvest of beaver by the year 2000 by

1 approximately 30 per cent; if my math is correct, that  
2 is 1,450 divided by 4,450?

3 A. Yes, that's correct.

4 Q. And that it also wants to encourage a  
5 substantial increase in harvest of other fur-bearing  
6 animals--

7 A. That's correct.

8 Q. --that are listed at that page?

9 A. That's correct.

10 Q. Can you also confirm for me, however,  
11 Mr. Monzon, that on the next page, page 127, column 1,  
12 Item 3, Strategy:

13 "That notwithstanding the Ministry's  
14 desire to substantially increase the  
15 harvest..."

16 The Ministry is there admitting that it does not even  
17 know how to set quotas effectively?

18 A. Under bullet 3?

19 Q. Not bullet 3, bullet 1 under  
20 Strategy. Isn't that what increasing the capability  
21 for setting and assessing the quotas for beaver and  
22 other fur-bearing species refers to; they have to  
23 increase their capability for setting and assessing the  
24 quotas, yet they are coming with numbers such as the  
25 numbers we have on page 126?

1                   A. What they are saying in terms of the  
2 strategy, they want to improve the degree to which they  
3 can reliably set numbers.

4                   Q. Well, how reliable -- sorry.

5                   A. That doesn't, in my opinion, indicate  
6 that the numbers that they have set now are unreliable.  
7 What I think we are looking at is a continual  
8 improvement in terms of the way we do business and  
9 continual improvements relative to technology and  
10 scientific understanding.

11                  Q. Page 133?

12                  A. Sorry?

13                  Q. Page 133, paragraph 6 under Area  
14 Description.

15                         Would you agree with me that the  
16 guideline there is admitting that the major resource  
17 problems of the northern part of the area are forest  
18 access road development conflicts that will or will  
19 soon affect several outpost camps in significant lake  
20 trout areas.

21                         This is not theoretical any more, Mr.  
22 Monzon.

23                   A. No.

24                   Q. It is now actual.

25                   A. That's what it says.



1                   Q. So earlier the discussion about can  
2 adversely affect outpost camps, at page 133 is now  
3 crystallized into, in fact, does; is that right, or  
4 will soon?

5                   A. Yes.

6                   Q. Thank you.

7                   A. I would point out that I think we are  
8 both making the same point, albeit in different ways,  
9 but I think what this is indicating is that if there is  
10 a particular conflict here that is going to have to be  
11 addressed in later management planning exercises.

12                   As I indicated earlier, that is one of  
13 the intentions of the planning document.

14                   Q. But at page 103 of the document the  
15 guideline admitted that the issue -- or says the issue  
16 is unresolved; I am suggesting to you that at page 133  
17 the issue has clearly been resolved in further  
18 expanding the road system.

19                   Isn't that true?

20                   A. I would not agree that page 133  
21 indicates that the issue is resolved. My sense is that  
22 page 133 indicates again that the problems are there  
23 and they are going to be resolved later on down the  
24 line through more precise management activity on the  
25 site.

1 Q. And you do not discern a clear  
2 emphasis in this document on furthering the access road  
3 system?

4 A. Oh, I discern that, yes.

5 Q. Thank you. So my question is:  
6 Having identified this problem at page 103 as having  
7 been unresolved, where in this document does MNR  
8 provide the solution, or even offer the solution, other  
9 than offering the solution of building more roads?

10 A. The solutions, I would suggest, are  
11 offered from page 108 through to and including the  
12 left-hand column of page 10 where a number of  
13 strategies are set out relative to access roads in  
14 modified management areas.

15 Q. I am sorry, page 10?

16 A. I am sorry, page -- from 108 through  
17 to and including the left-hand column of page 110.

18 It was never the intention of the Land  
19 Use Guidelines to resolve each and every conflict that  
20 was identified, but rather to make sure that the  
21 conflicts were identified to the degree that they could  
22 be, and to put some strategies in place at the general  
23 level which, if followed, could help to resolve those  
24 conflicts when they had to be addressed on a specific  
25 case-by-case basis in a particular resource management

1 plan.

2 The strategies that are put forward there  
3 are strategies which we are directing -- asking staff  
4 to follow and to look at and there may in fact be  
5 additional strategies that can be developed when staff  
6 meet with, for example, a tourist outfitter or a lodge  
7 owner and a timber company. There may be other ways to  
8 solve the problem.

9 Q. Commencing at page 133 and moving  
10 through the next couple of pages are a couple of, what  
11 I guess are called, integrated multiple-resource  
12 management strategies; isn't that correct?

13 Sorry, can you hear me?

14 A. Well, you are in competition, but I  
15 have the sense of it.

16 Q. Why don't we wait a moment, and I  
17 will ask the question again.

18 THE CHAIRMAN: Can you give us an  
19 indication, Mr. Castrilli, how long you might be?

20 MR. CASTRILLI: I have about five pages  
21 left, so I would think less than a half hour. I'm  
22 sorry, I didn't realize, it is eleven o'clock. This is  
23 as good a place as any for a break.

24 THE CHAIRMAN: Yes. Why don't we take a  
25 20-minute break at this time.

1 MS. MURPHY: Mr. Chairman, it might be  
2 advisable for me to give you those documents before you  
3 do.

4 THE CHAIRMAN: Okay. We probably won't  
5 deal with that right away, but why don't you distribute  
6 it to everyone and we will have a copy as well.

7 Thank you.

8 ---Recess taken at 10:53 a.m.

9 ---Upon resuming at 11:35 a.m.

10 THE CHAIRMAN: Thank you, ladies and  
11 gentlemen. Please be seated.

12 Mr. Castrilli?

13 MR. CASTRILLI: Thank you, Mr. Chairman.

14 Q. Mr. Monzon, I would like to summarize  
15 some observations on the Wawa District Guidelines,  
16 rather than go through more examples this morning.

17 Let me suggest to you that from a reading  
18 of this document, which is Document 8 in Exhibit 69,  
19 the impression I am left with is that the entire  
20 document is geared to achieving maximum production of  
21 every conceivable exploitable commodity, whether it is  
22 fish, wood, or what have you.

23 Is that a fair impression to have?

24 MR. MONZON: A. It's certainly not my  
25 impression, Mr. Castrilli.



1 Q. Your impression is what about this  
2 document, then?

3 A. That it is not, I think, as you have  
4 described it, an indication -- what were the terms you  
5 used, maximum...?

6 Q. Maximum production of every  
7 conceivable exploitable commodity.

8 A. I would not agree with that.

9 Q. Well, would it be fair to say that  
10 MNR's planning philosophy is to maximize economic  
11 activity for the province from the land and resource  
12 base. Would that be a fair statement?

13 A. One of the objectives deals with  
14 the -- let me back up.

15 The objective -- the goal of the Ministry  
16 talks to the provision of opportunity for the  
17 continuous economic and social benefits. I don't think  
18 I would characterize it as maximizing economic  
19 benefits, I would characterize it more in the term of  
20 optimizing economic benefits and I would use that term,  
21 recognizing the impact and the understanding that has  
22 to be achieved relative to social benefits as well as  
23 the conservation of the natural resources.

24 Q. And it is your testimony that the  
25 Wawa Guidelines do that; is that correct?

1 A. Certainly my impression.

2 Q. Let me ask you this: You talk about  
3 optimizing economic benefits as opposed to maximizing.  
4 What do you mean by that?

5 A. Well, maximizing would be to develop  
6 the resources to their maximum extent where one would  
7 be -- the issue of conservation, the issue of  
8 protection, the issue of environmental quality would  
9 not necessarily be an issue, the issue would simply be  
10 how much revenue can be taken from the resource.

11 Q. Sorry, was I correct; you said that  
12 development of resources to the maximum extent is part  
13 of the Ministry's philosophy, or did I mishear you?

14 A. I think you misheard me.

15 Q. Sorry, could you repeat that part of  
16 your answer then.

17 A. Okay. Could you repeat the question  
18 for me again.

19 Q. I asked you: You said that  
20 optimizing economic activity was what the Ministry was  
21 striving for and I asked you how that differed from  
22 maximizing economic activity. And that is the  
23 question -- that is the answer I didn't hear.

24 A. And I believe what I was trying to  
25 indicate was that my view of maximizing economic

1 activity relative to natural resources would be to  
2 utilize the natural resources in such a way so as to  
3 obtain the maximum amount of revenue from those  
4 resources, to exploit them to the fullest degree  
5 without having any regard for principles of  
6 conservation, principles of the environment, principles  
7 of multiple-use, principles of sustained yield  
8 management, and certainly that is not my  
9 interpretation, nor is it the interpretation of the  
10 Ministry in terms of the management principles and  
11 philosophy that it is following.

12 It is certainly the principle -- the  
13 philosophy of integrated resource management, I believe  
14 exemplifies the understanding, the sensitivity that the  
15 Ministry tries to maintain and wants to maintain  
16 relative to all of the resource values that are at  
17 stake.

18 Q. Let me ask you this: I presume from  
19 time to time you, even in the course of preparing a set  
20 of guidelines like the Wawa Guidelines, would you have  
21 not wanted to consider doing a comparative economic  
22 analysis of two competing interests?

23 To me more specific, did you do one; that  
24 is to say, did you do a comparative economic analysis  
25 of log road building versus, say, the fly-in fisheries

1 sector and its value.

2 Was that done for Wawa?

3 A. Not having the direct responsibility  
4 for Wawa, I cannot tell you specifically, Mr.  
5 Castrilli, if it was -- I cannot tell you specifically  
6 what was done or what was not done.

7 Certainly in the development of the  
8 Guidelines, the districts were instructed to look at  
9 that sort of comparison, but it has been some years  
10 since that was done, so I don't recall the specifics.

11 Q. I would like to have from the  
12 Ministry whatever comparative economic analysis of -  
13 logging/road building in the Wawa Guidelines was done,  
14 if it was done in comparison say to the value of the  
15 fly-in fisheries sector.

16 A. We would endeavor to provide that to  
17 you. I would make, Mr. Chairman, the same  
18 qualification that I made with the other -- relative to  
19 the other question around timber targets, though.

20 This is going back some eight years into  
21 the files and the degree to which that information will  
22 be available or can be found, I can give you no  
23 guarantees.

24 THE CHAIRMAN: Well, would you undertake  
25 to use your best efforts to find out if any comparative



1 studies of the nature that Mr. Castrilli has indicated  
2 are available.

3 If they are not available, you come back  
4 and say: I am sorry, we either cannot find them or  
5 they are unavailable or it would take 15 years to put  
6 them together. And then we will deal with it then.

7 Otherwise, if they are available, would  
8 you undertake to produce them?

9 MR. MONZON: (Nodding affirmatively)

10 THE CHAIRMAN: Thank you.

11 MR. CASTRILLI: Mr. Chairman, maybe I  
12 could just insert in the record here one concern.

13 I am content with the order you have just  
14 outlined, but I am concerned that if there is going to  
15 be a failure to provide the background that supports  
16 the material that has been filed with this witness  
17 statement or any other, that certainly that must result  
18 in no weight being given to the material that is filed.

19 THE CHAIRMAN: No weight to any of the  
20 material that is filed?

21 MR. CASTRILLI: If there is no support  
22 for it, if there is no support for anything that  
23 constitutes the Wawa Guidelines, surely all they are is  
24 a creative writing.

25 THE CHAIRMAN: Well, I suppose that if

1       there is oral testimony from a witness panel on the  
2       Wawa Guidelines or, in general, in a manner which would  
3       affect the Wawa Guidelines or any other guidelines for  
4       any other district, we can certainly rely on the oral  
5       testimony as being supportive of the document itself.

6               I am not sure that we can just  
7       across-the-board agree to exclude documentation that is  
8       filed without support documentation, if it is otherwise  
9       supported by oral testimony of the witnesses.

10              And I think this witness -- or this  
11       witness panel has made comments on the Wawa Guidelines  
12       which may not be supportible by specific other  
13       documentation that the Board should be taking into  
14       account. I do not think we can agree to that, Mr.  
15       Castrilli.

16              MR. CASTRILLI: Well, I just wanted to  
17       say it at this point because I see it as a developing  
18       concern with a lot of the material that has been filed.

19              THE CHAIRMAN: Mr. Edwards?

20              MR. EDWARDS: Mr. Chairman, if I might  
21       interrupt Mr. Castrilli for a minute. I know he  
22       requested comparative data respecting timber, road  
23       access and fly-in fishing.

24              It is my intention to ask for a lighter  
25       type of undertaking in respect to other fly-in

1 businesses, hunting, tourism, you know, et cetera.

2 I was wondering if you would consider  
3 amending his request and the Board reconsider amending  
4 its order to include any other data in the area.

5 THE CHAIRMAN: Well, I think if the  
6 Ministry is going to take time and effort - which I  
7 think they have agreed to do - to look to see if there  
8 were any comparative studies that were undertaken with  
9 respect to the Wawa Plan, they should be willing to  
10 provide any comparative studies that were done, whether  
11 it is specifically the ones that Mr. Castrilli asked  
12 for or the ones that would include in your concerns as  
13 well.

14 MR. EDWARDS: Thank you, Mr. Chairman.

15 MR. CASTRILLI: Q. Mr. Monzon, while we  
16 are on the subject of creative writing, would you agree  
17 with me that much of the planning material produced by  
18 the Ministry of Natural Resources in this area would be  
19 better described as creative writing about the resource  
20 than as a realistic attempt to control resource  
21 development over time to achieve the objectively stated  
22 values set out in the documents you've produced?

23 A. No, I would not.

24 Q. Is that another place where you and  
25 Dean Baskerville disagree?

1                   A. If Dean Baskerville has characterized  
2 the District Land Use Guidelines as creative writing  
3 then, yes, I would disagree.

4                   Q. I refer you to page 84 of Exhibit 16.  
5 Do you have the page?

6                   A. Yes, I do.

7                   Q. The middle paragraph on the page, the  
8 last sentence. Opposite what I just asked you was a  
9 question. Can you see there that Dean Baskerville's  
10 conclusion is as I have set it out in a proposition to  
11 you and you have indicated you disagree.

12                   Is this another instance, in your  
13 opinion, where Dean Baskerville has got it wrong?

14                   A. I would suggest that this is another  
15 instance where Dean Baskerville and I disagree.

16                   Q. And on what basis do you disagree  
17 with Dean Baskerville? Did he not have all the  
18 information before him?

19                   A. I don't know what he means by  
20 creative writing and I would suggest and I believe the  
21 evidence has shown that the documents are realistic  
22 attempts relative to a description of resource  
23 management values and guidelines that should be  
24 followed.

25                   Q. Sorry?



1                   A. In fact, Mr. Baskerville, in a number  
2 of -- in at least one occasion and -- has indicated a  
3 support for the documents. I think, Mr. Castrilli, you  
4 referred to this some time earlier in your  
5 cross-examination and looking at page 71 of Dean  
6 Baskerville's Report where he says at the bottom of  
7 paragraph 3:

8                   "Because the real value in the SLUP and  
9 DLUG lies in the provision of local  
10 guidelines in the best sense for dealing  
11 with constraints and concerns in the  
12 pursuit of real resource management  
13 design and implementation at the  
14 management level."

15                  Q. And the first -- I am sorry, were you  
16 finished?

17                  A. And he says that, in the context of  
18 making the point which I believe you have made earlier,  
19 that it is difficult -- it is not -- or as he to use  
20 his terms: "It is not possible to manage the resources  
21 towards the objectives in the SLUPS and the DLUGS - and  
22 I am paraphrasing a little bit there.

23                  And then to quote:

24                  "...nor to evaluate progress towards  
25 them. However..." he says "...it is

1 possible to report the work done in a  
2 format..."

3 He used the term 'gives illusion', which we have some  
4 difficulty with:

5 "but is a measurement of management  
6 progress."

7 Then he goes on to say again -- not again, he goes on  
8 to say --

9 Q. You are going on to say again?

10 A. I am saying again.

11 "In any event, this may not be a major  
12 concern because the real value in the  
13 SLUP and DLUG lies in the provision of  
14 local guidelines in the best sense for  
15 dealing with constraints and concerns in  
16 the pursuit of real resource management  
17 design and implementation at the  
18 management level."

19 Q. And then at page 84 in summary, under  
20 the heading of Summary, Dean Baskerville takes the  
21 position that the material he has been reviewing, the  
22 land use material he has been reviewing, is a creative  
23 writing about the resource.

24 A. Yes, that's correct. He also says at  
25 page 70:

1 "They provide comprehensive documents  
2 that provide guidance with respect to  
3 local goals and ways of achieving  
4 resource management goals."

5 Q. But that is a paragraph he doesn't  
6 choose to repeat in the conclusion and his overall  
7 conclusion is that they are creative writing; is that  
8 correct?

9 A. He has not chosen I believe to repeat  
10 that paragraph in the summary. The weight which he  
11 chooses to put on it or not put on it, is something  
12 that I can't comment on.

13 Q. Now, generally back I believe the  
14 first day of your evidence - your evidence and Mr.  
15 Douglas' evidence - last week, last Thursday, a lot of  
16 evidence was given respecting the need to consult  
17 stakeholders and interest groups and members of the  
18 public before taking actions with significant impact on  
19 the management of resources.

20 Do you recall that testimony?

21 A. I recall that testimony generally,  
22 yes.

23 Q. Has the Ministry undertaken measures  
24 to implement public participation in respect of the  
25 approval of forest management agreements?

1                   A. They have. I am not an expert on the  
2 specific ways in which public participation is carried  
3 on with respect to forest management agreements.

4                   I believe that representatives of later  
5 panels will be able to deal with that more effectively  
6 than I will.

7                   Q. Could you advise me, or could Mr.  
8 Freidin advise me of which panel he is referring to?

9                   MR. FREIDIN: I cannot offhand. I will  
10 advise you today.

11                  THE CHAIRMAN: Will it be dealt with?

12                  MR. FREIDIN: It will be addressed, yes.

13                  MR. CASTRILLI: And that includes the  
14 issue of public participation in relation to forest  
15 management agreements?

16                  MR. FREIDIN: The evidence will be in  
17 relation to public involvement, or public consultation  
18 in relation -- prior to the formation of forest  
19 management agreements.

20                  MR. CASTRILLI: Sorry, I don't mean to  
21 pursue this. If it is going to be dealt with later, I  
22 just want to be clear what it is that is going to be  
23 dealt with later.

24                  Is it going to be evidence about measures  
25 that are now underway, or is it evidence about what



1 will in fact be done should the Board grant an approval  
2 with respect to public participation?

3 MR. FREIDIN: The former.

4 MR. CASTRILLI: So it's about currently  
5 existing practices?

6 MR. FREIDIN: Yes.

7 MR. CASTRILLI: Okay, thank you.

8 Q. Mr. Monzon, generally, when you have  
9 taken a step which you regard significant in relation  
10 to development of this class environmental assessment,  
11 I understand your testimony is that you would consult  
12 the Board -- excuse me, consult the public beforehand;  
13 is that correct?

14 A. I am sorry, I just didn't follow your  
15 question.

16 Q. Sorry. When you have taken a step  
17 which you regard as significant in relation to the  
18 development of this environmental assessment - and I am  
19 speaking now over the course of the last decade or  
20 more - is it your testimony that you would have  
21 consulted the public beforehand?

22 A. In the development of the Class  
23 Environmental Assessment Document?

24 Q. Yes.

25 A. Certainly there has been discussion

1 with a number of the stakeholders. At this point it  
2 might be more appropriate for Mr. Douglas to comment on  
3 the specifics of that.

4 Q. I am content to have Mr. Douglas  
5 answer.

6 MR. DOUGLAS: A. Yes, through the  
7 presubmission consultation process I believe there was  
8 something in the neighbourhood of 40 to 50 provincial  
9 groups contacted, comments were asked on the draft.  
10 There has been, I believe, a second stage in which we  
11 identified how we would like to respond to some of the  
12 issues that were raised.

13 When we sent out -- or when we completed  
14 the document in December '85, we made sure it went out  
15 to the mailing list that we had developed through the  
16 presubmission consultation and we again did that in the  
17 '87 version.

18 So we have kept people informed as things  
19 have gone along.

20 Q. So that is in relation to the last  
21 two drafts -- or the last two versions of the Class EA?

22 A. Plus in 1973 when the first draft  
23 document was prepared, we had I believe three or four  
24 meetings with various groups, whether they were  
25 environmental groups, other government agencies,

1 theforest industry, we invited representatives of  
2 native people, tourist outfitters, there was a wide  
3 variety of groups, they were essentially provincial  
4 groups.

5 THE CHAIRMAN: Mr. Douglas, was this a  
6 process, this prehearing consultation, that was a  
7 program derived at with consultation by MNR with the  
8 Environmental Assessment Branch of MOE, or was it  
9 something that you devised on your own?

10 How did you arrive at what you would be  
11 doing by way of prehearing consultation?

12 MR. DOUGLAS: I am not quite sure of the  
13 early part because I came on the scene about a week  
14 before the draft document went out in the fall of '83.

15 Well, certainly I know from -- as we have  
16 gone along, we have kept in close contact with the  
17 Environmental Assessment Branch.

18 In terms of who were the groups that  
19 would get this; this is based on normal Ministry  
20 practice of knowing what kind of groups have interests  
21 in the kinds of things we do.

22 From the land use planning program, I  
23 think we had a list of those provincial interest  
24 groups, organizations, industry associations that had  
25 an interest in the kinds of thing we did.

1                   Whenever we have a program such as this,  
2                   we look at that list and say: Well, they wouldn't be  
3                   interested because it is really not - based on the  
4                   history of their involvement - something of interest,  
5                   but we should add these groups.

6                   MR. MONZON: A. I think, Mr. Chairman,  
7                   if I might add: Certainly in the determination of the  
8                   presubmission consultation in '83 certainly there was  
9                   discussion with MOE. Now, they were -- that Ministry  
10                  was aware of what the Ministry of Natural Resources was  
11                  doing.

12                  To answer your question specifically as  
13                  to whether or not it was something that we indicated  
14                  that we were going to do or we did together with MOE, I  
15                  can't recall, but I know there was consultation and I  
16                  know -- I believe the two ministries were in accord, if  
17                  my memory serves me correct, because I can recall  
18                  representatives of MOE at those hearings.

19                  MR. FREIDIN: Do you want more specific  
20                  information than that, Mr. Chairman?

21                  THE CHAIRMAN: No no. I just wondered,  
22                  in this particular instance, how this presubmission  
23                  consultation process was arrived at.

24                  I know that under most applications there  
25                  is consultation with Environmental Assessment Branch of



1 MOE as to what is proposed to be done, and they often  
2 suggest: Well, in addition to that, you should also be  
3 looking at this or that, et cetera.

4 And I wondered if that was sort of the  
5 way in which this preconsultation program was  
6 developed. That was all.

7 MR. DOUGLAS: Well, we were certainly in  
8 continuous contact with the EA Branch and we certainly  
9 were following their general advice that we should try  
10 to sort out as many things as we could before we got  
11 the document.

12 Now, I would refer you to Appendix 5 in  
13 the EA Document. We haven't led particular evidence on  
14 this, but this appendix gives some kind of impression  
15 of the numbers of meetings that were held and the types  
16 of people who were met with.

17 It gives, for example, the dates of the  
18 various meetings, the actual names of the attendees,  
19 the various seminars that we had, the various  
20 ministries that we met with, who we received  
21 submissions back from. So that is the material there.

22 THE CHAIRMAN: Thank you, very much.

23 MR. CASTRILLI: Q. Mr. Douglas, can you  
24 advise the Board what steps you took to solicit public  
25 input respecting the change in name of this Class EA

1 from forest management to timber management?

2 MR. DOUGLAS: A. I believe in the second  
3 phase we identified results of the first phase. One of  
4 the issues was a confusion over the term and  
5 subsequently, I believe - I would have to verify it  
6 from the files - we went back to those groups and  
7 identified what we intended to do to delete this  
8 confusion.

9 Q. Well now, were there not  
10 submissions -- were there submissions about this change  
11 in name?

12 A. To whom?

13 Q. To you?

14 A. I cannot recall that without going  
15 through the individual meetings. I know we had a  
16 specific meeting with the Federation of Ontario  
17 Naturalists and the Canadian Environmental Law  
18 Association to deal with the issues and our responses  
19 to that. We set up a special meeting for that.

20 Those two people, simply because they  
21 were unable to attend our other general meetings and,  
22 to my knowledge, we received no submission back from  
23 that group based on that specific meeting I speak of.

24 And if the Board would like me to refer  
25 to the specific meeting, I can.

1 Q. Well, I wonder if just generally, did  
2 you receive submissions about concern about the change  
3 in name?

4 A. I would have to go back and read the  
5 individual documents. I don't remember a groundswell,  
6 no, but if you want me to be precise, I would have to  
7 review all the files.

8 Q. Would that be an extensive  
9 undertaking, or is that something you could do and  
10 simply have Mr. Freidin file?

11 THE CHAIRMAN: Well, put it this way. Do  
12 you have information to the contrary? Could you just  
13 perhaps ask the witness, if you have information to the  
14 contrary, whether he recalls something?

15 MR. CASTRILLI: I don't have material  
16 here that I wish to put to him. I simply wish to know.

17 THE CHAIRMAN: So you do not know of  
18 something specifically what you are trying to have him  
19 confirm?

20 MR. CASTRILLI: I am simply asking him:  
21 Does he know, and were there submissions? It is a fair  
22 question and he can find out and simply advise the  
23 Board through Mr. Freidin.

24 MR. FREIDIN: I am advised that this sort  
25 of information is in the Environmental Assessment

1 Branch's public file and has been there since '83 or  
2 '84.

3 MR. CASTRILLI: Well, the change in name  
4 occurred in '85, so...

5 MR. FREIDIN: Well, that as well. All  
6 the presubmission -- all of the submissions of people  
7 in relation to the drafts and during presubmission  
8 consultation, I am advised, are on file with the  
9 Ministry of Environment, Environmental Assessment  
10 Branch.

11 MR. CASTRILLI: That is fine.

12 Q. Let me ask you, Mr. Douglas or Mr.  
13 Monzon, Appendix 4 to the environmental assessment  
14 which talks about phasing in timber management plans  
15 for all forest management units.

16 MR. MONZON: A. Yes.

17 Q. Do you have the page?

18 A. Yes, we do.

19 Q. Can you advise the Board why you  
20 propose to apply a timber management plan to a forest  
21 management unit?

22 A. Why we propose to apply a timber  
23 management plan to a forest management unit?

24 Q. Yes.

25 A. Because that is the planning unit on



1       which the resource management plan for timber  
2       management is done.

3                   Q.   Why wouldn't you want to apply a  
4       forest management plan to a forest management unit?

5                   A.   As I indicated, I believe in evidence  
6       back last Thursday, the problem that we are having with  
7       respect to the issue of title, forest versus timber, is  
8       one that, in our view, is largely a perception from the  
9       standpoint in which we have been using the term 'forest  
10      management' it is in fact -- from the standpoint in  
11      which we have been using the term 'forest management'  
12      with respect to this class environmental assessment,  
13      the term 'forest management' is synonymous with the term  
14      'timber management'.

15                   We made the name change to make it quite  
16      clear as to the purpose of the undertaking and further  
17      clarify, in preparing that purpose, the specific  
18      activities with which the undertaking would deal with.

19                   Q.   Can I ask you to turn to the Table of  
20      Contents of the Class EA, Roman numeral VII under the  
21      heading Alternatives to the Undertaking.

22                   Do you have that page?

23                   A.   No, I am sorry, I don't have it.

24                   Q.   Maybe I can help you find it.

25                   MR. CAMPBELL:   Mr. Chairman, I think the

1 reference is to the portion after the Summary, there is  
2 Table of Contents for the complete document as supposed  
3 to the Summary, so if go a little farther into it.

4 MR. CASTRILLI: I believe the witness has  
5 the page. I will wait.

6 THE CHAIRMAN: I am not sure we do, just  
7 a minute.

8 Very well, we have it.

9 MR. CASTRILLI: Thank you.

10 Q. Mr. Monzon, you will see there under  
11 the heading Alternatives to the Undertaking, that the  
12 two alternatives considered by the Ministry of Natural  
13 Resources that are proposed are: Doing nothing, and  
14 harvest with no renewal.

15 MR. MONZON: A. Sorry, I see three  
16 alternatives: Timber management, the do nothing or no  
17 alternative, and then the harvest which would be no  
18 renewal.

19 Q. Sorry, it is 6.11 and 6.12.

20 A. Okay, sorry, I am sorry. Yes, yes, I  
21 have it. That's right.

22 Q. Can you advise the Board why forest  
23 management is not even a contemplated alternative to  
24 timber management?

25 A. My understanding of that would be

1       that the first alternative that we have is the -- I am  
2       trying to make sure I understand your question.

3                   Q.   Perhaps I could rephrase it and you  
4       might have a better understanding of what I am getting  
5       at.

6                   Your first alternative is 'do nothing',  
7       which basically, if I understand the text that later  
8       describes the 'do nothing alternative', we would be  
9       importing all our wood?

10                  A.   Yes.

11                  Q.   Then you have another alternative  
12       called 'harvest with no renewal' which would mean  
13       basically, you cut and you keep your fingers crossed as  
14       to whether you get any trees to grow back or you wonder  
15       if you are going to get any trees back which can be  
16       used to cut 80 years from now.

17                  Why would not be a reasonable alternative  
18       to timber management, forest management. You have two  
19       extreme examples as alternatives and you don't have one  
20       in the middle that is more reasonable. Why is that?

21                  A.   I think I would have to go back to  
22       the purpose of the undertaking as we have described it.  
23       And we describe the undertaking as:

24                           "Provision of a continuous and  
25       predictable supply of wood to the forest

1 industry."

2 Q. And forest management has no role to  
3 play in this hearing; is that your submission?

4 A. We talk on page 9 of the class  
5 environmental assessment of the related activities that  
6 would be part of the undertaking, and we talk about the  
7 provision of access, the harvest renewal, and  
8 maintenance relative to the production of timber.

9 If you define -- if one defines the term  
10 'forest management' as being all exclusive and  
11 including all of the timber management activities that  
12 take place in the forest, together with all of the  
13 other activities that take place in the forest,  
14 recreational activities such as hunting, such as  
15 fishing, such as camping, as I indicated earlier, that  
16 definition is not, in our view, the definition that we  
17 have used and tried to use consistently through this  
18 environmental assessment process.

19 As I indicated earlier, there was  
20 confusion about -- confusion was arising about that  
21 point and we attempted to clarify it by specifically  
22 defining the undertaking, the purpose and the sequence  
23 of related activities.

24 Q. Would you agree with me that there is  
25 a respectable body of opinion that would suggest that



1 forest management would be a reasonable alternative to  
2 the -- as an additional alternative to this  
3 undertaking, notwithstanding that it does not appear to  
4 be the Ministry of Natural Resources' view of things?

5 A. With respect, I am not aware of what  
6 that -- I think you have used the term 'substantial  
7 body of opinion' is.

8 Q. I believe I said a body of opinion.

9 A. A body.

10 MR. FREIDIN: Respectable body.

11 MR. CASTRILLI: Q. Respectable body. It  
12 wasn't quantitative, it was qualitative.

13 Would you agree or disagree?

14 A. I guess I would have to review the  
15 components of that respectable body.

16 MR. CASTRILLI: Those are my questions,  
17 Mr. Chairman.

18 MR. MONZON: Mr. Chairman, if I might  
19 just before we -- there were two items that arose out  
20 of crossexamination yesterday that I indicated we would  
21 try and get back on.

22 The first of those dealt with the issue  
23 of the environment and I believe the issue was along  
24 the lines of Mr. -- you will have to forgive me if I  
25 tend to paragraph the issue - on page 75 of the witness

1 statement there is a reference to environmental  
2 standards and I think the issue that was raised  
3 yesterday was whether or not there was a reference to  
4 environmental standards or quality in the 1980 Land Use  
5 Guidelines and those are -- and I am sorry, the  
6 paperwork has gotten the best of me, but it is  
7 something No. 10, but it is this document.

8 MR. CASTRILLI: Exhibit 10.

9 MR. MONZON: Exhibit 10. In response to  
10 trying to pursue that a little more closely, within the  
11 1980 Guideline Document, Exhibit 10, I would refer you,  
12 first of all, page 6 under Planning Principle No. 3,  
13 and there is a reference to the disclosure of all  
14 environmental impacts as part of the land use planning  
15 process, all environmental impacts that one is aware  
16 of.

17 Planning Principle No. 4 there is a  
18 further reference to the necessity to constantly  
19 monitor the environment.

20 On page No. 12 of the same document under  
21 Natural Resources -- that is under Item B under Natural  
22 Resources there is references to air quality and water  
23 quality, both of which are from the original  
24 guidelines.

25 And on page 13 there is reference at the

1 bottom under section E Problems and Issues to water  
2 pollution and sensitive areas. And sub-sensitive areas  
3 that was an item that we discussed yesterday, that is  
4 within the same context, and I don't think I need to  
5 repeat that.

6 THE CHAIRMAN: Are you still going to  
7 provide a circular that you referred to?

8 MR. MONZON: Yes, we have undertaken to  
9 do that sir, yes.

10 On page 15, again, that was one I covered  
11 yesterday.

12 On page 16, under Evaluating Options and  
13 Choosing a Preferred Option there are two references.  
14 The first reference is in the second paragraph  
15 beginning with the -- on the left under the heading:  
16 Evaluating Options and Choosing a Preferred and that  
17 paragraph reads:

18 "Since each conceptual plan and revival  
19 must meet all targets..."

20 We have had some discussion about that  
21 today:

22 "...the only difference between them  
23 would be economic cost, social  
24 preference, future options and whatever  
25 environmental impacts are not accounted

1                   for in the options."

2                   So there is further reference to the  
3 importance of the environmental impacts there.

4                   And then, finally, at the end of that  
5 paragraph it is suggested that:

6                   "All things being equal, preference be  
7 given to plans that..."

8                   And there is an A, B, C, D which states:

9                   "...cause the least environmental  
10 damage."

11                  Finally on page 23 which is Appendix 2 of  
12 that document, at the top right-hand column where we  
13 talk about objectives being:

14                  "...quantifiable ends which must relate  
15 to one or more basic needs, and should be  
16 stated wherever possible in terms of  
17 human impacts or benefits like food,  
18 shelter, jobs, dollars earned, or user  
19 days of recreation for environmental  
20 quality standards.

21                  So I would make the point, Mr. Chairman,  
22 that in terms of the issue as to whether or not there  
23 was - I am searching for the right word - I would make  
24 the point that in terms of environmental quality, that  
25 it is well spaced throughout the 1980 Guidelines for



1 Land Use Planning, Exhibit 10, and that in fact is  
2 treated in a more complete manner than it was in the  
3 1974 Guidelines.

4 I guess the final point, or the last  
5 point that I wanted to bring to the Board's attention  
6 was that yesterday there was some discussion about the  
7 issue - and I will have to characterize it again - as  
8 to whether or not land use planning should be subject  
9 to environmental assessment. And I believe I made  
10 reference to an agreement or an understanding between  
11 the two ministries and we were going to try and do  
12 that, try and find that understanding.

13 There may be additional, but I would  
14 refer the Board to Appendix 14 of the Staff Paper  
15 prepared for the Royal Commission on the Northern  
16 Environment. In that Appendix on page 50, at the  
17 bottom --

18 MRS. KOVEN: Excuse me, Mr. Monzon. Do  
19 we have that?

20 MR. MONZON: No, you would not have this,  
21 I don't believe.

22 Mr. Fahlgren says to me or says:

23 "In his letter to me..."

24 That's to Mr. Fahlgren:

25 "...February 1, 1983, the Minister of the

1 Environment acquiesced to his colleague's  
2 view of the plans being guidelines and he  
3 went beyond that to establish the link  
4 between guideline status and status under  
5 the Act.

6 According to the Minister, the Act  
7 identifies the significant positive and  
8 negative impacts of concrete proposals  
9 and, where reasonable alternatives are  
10 feasible, it ensures that they are  
11 considered ...."

12 It goes on to say -- this is the Minister  
13 of the Environment with respect to land use plans:

14 "...the Ministry of Natural Resources has  
15 advised that these plans are broad  
16 frameworks indicating suitability and  
17 potential. They do not allocate  
18 resources to project-specific end-uses.  
19 I have accepted this position and agreed  
20 that the Environmental Assessment Act  
21 does not apply to these land use plans  
22 ....

23 I believe that it would be more  
24 appropriate to apply the Act at the level  
25 of planning where specific decisions

1                   regarding land use are to be made."

2                   THE CHAIRMAN: Would you provide a copy  
3 of that excerpt to the Board at the appropriate time,  
4 if we do not have it.

5                   MR. MONZON: Yes, sir.

6                   THE CHAIRMAN: Thank you.

7                   MR. CAMPBELL: Mr. Chairman, I wondered  
8 earlier this morning, Mr. Monzon referred to and gave  
9 another quote from that document, and I wondered if he  
10 could just file it together with this quote. I believe  
11 it was a somewhat earlier page, I believe it was the  
12 Minister's statement, at that time Mr. Sullivan.

13                   MR. MONZON: It was on page 50 also.

14                   THE CHAIRMAN: Would it be a problem  
15 filing the whole Report on Northern Development with  
16 the Board? We might as well mark it as an exhibit.

17                   MR. FREIDIN: The whole report?

18                   THE CHAIRMAN: Well, that is not --  
19 sorry, I am thinking.

20                   MR. MONZON: This is the appendix.

21                   THE CHAIRMAN: I am thinking about one  
22 document like this.

23                   MR. MONZON: This is the appendix, this  
24 is appendix.

25                   MR. CASTRILLI: Actually, the

1       appendices...

2                   MR. FREIDIN: Well, you want us to make  
3 one copy of the whole Fahlgren Report?

4                   MRS. KOVEN: No, we don't want...

5                   THE CHAIRMAN: There is one report, I  
6 know I have seen a copy of it, but it is about an inch  
7 and a half thick. Would that one report contain these  
8 appendices?

9                   MR. CASTRILLI: Yes, it would. It is  
10 Appendix 14 that Mr. Monzon is referring to.

11                   THE CHAIRMAN: Yes. Well, perhaps we  
12 could file at least a copy of the one report and we  
13 will exhibit it and then it will be there in some  
14 context rather than just excerpts.

15                   MR. CASTRILLI: Mr. Chairman, I am indeed  
16 finished.

17                   THE CHAIRMAN: Thank you, Mr. Castrilli.

18                   MR. HUNTER: Mr. Chairman, I would like  
19 some direction.

20                   In my cross-examination I will be making  
21 reference to the December '85 submission. Mr.  
22 Castrilli filed an exhibit with you that contains pages  
23 90 to - I am not sure the end number - with respect to  
24 that document.

25                   THE CHAIRMAN: All right.



1                   MR. HUNTER: I was going to file three  
2 pages. In reviewing my cross-examination, I make  
3 reference in a very general way back to this exhibit --  
4 sorry, to this document. I don't refer to any  
5 specific pages, I just say referring, as I say, back to  
6 it in a general sense.

7                   If my colleagues are happy then not  
8 having this whole document filed, then I can live with  
9 that, on the other hand they may say: No, let's just  
10 put the whole document in.

11                   So I would like some direction from you?

12                   THE CHAIRMAN: Is there a problem with  
13 putting in a copy of the whole document itself and then  
14 we have it all?

15                   MR. FREIDIN: I have no problem with  
16 that.

17                   THE CHAIRMAN: And then if you want to  
18 file, in terms of your cross-examination specific  
19 pages, you can do that as well.

20                   MR. HUNTER: Can I ask MNR to do that, or  
21 do I have to run cross the street to xerox machine to  
22 do that?

23                   MR. FREIDIN: This is 1985?

24                   MR. HUNTER: That's correct.

25                   MR. FREIDIN: December, 1985?

1 MR. HUNTER: That's correct.

2 I will have to work from my copy in terms  
3 of the cross-examination, but if one copy could be  
4 filed...

5 THE CHAIRMAN: After lunch, would it be  
6 possible for MNR to provide one copy at least for the  
7 purposes of the record?

8 MR. FREIDIN: I am advised that we can do  
9 that.

10 THE CHAIRMAN: All right.

11 MR. FREIDIN: If we have a problem, I  
12 will advise you of that too.

13 THE CHAIRMAN: Okay.

14 MR. FREIDIN: We didn't bring up a lot of  
15 the '85 issue.

16 THE CHAIRMAN: We can understand that,  
17 but I think it is better perhaps to have the whole  
18 document filed and then we can refer to the specific  
19 pages.

20 MR. HUNTER: In order that I need not  
21 hopefully get into this subject, did I understand Mr.  
22 Freidin correctly to say that the proponent would be  
23 leading some evidence in relationship to consultation  
24 at some point in time, or was that the evidence that  
25 was led in this panel by Mr. Douglas?

1                   MR. FREIDIN: At the present time that is  
2 the evidence. We weren't intending to lead evidence.

3                   MR. HUNTER: You were not intending to?

4                   MR. FREIDIN: That is our present  
5 intention.

6                   THE CHAIRMAN: But I thought you  
7 indicated that you would be dealing in a later panel  
8 with the question of public consultation in general.

9                   MR. FREIDIN: Oh. I thought he was  
10 talking about presubmission consultation.

11                   Let's make sure we are talking about the  
12 same thing.

13                   MR. HUNTER: I am not that sophisticated.  
14 My understanding was you were going to lead evidence in  
15 relation to consultation. That, to me, includes  
16 preconsultation as well as other forms of consultation.

17                   MR. FREIDIN: That undertaking in  
18 relation to consultation was consultation prior to the  
19 signing of forest management agreements.

20                   MR. HUNTER: Not in terms of the  
21 preparation of this report?

22                   MR. FREIDIN: That is correct.

23                   THE CHAIRMAN: And you will not be  
24 dealing with that issue at all in terms of public  
25 participation in general with a future panel?

1                   MR. FREIDIN: In relation to the public  
2                   consultation which preceded the filing of the document,  
3                   our present intention is that we were not going to be  
4                   dealing or providing evidence in relation to that.  
5                   That matter is described in the Environmental  
6                   Assessment Document and our present intention is that  
7                   we were not going to supplement that with oral  
8                   evidence.

9                   MR. HUNTER: May I have one moment?

10                  MR. COLBORNE: Mr. Chairman, while you  
11                  are waiting for Mr. Hunter, I think he has another  
12                  question.

13                         I want to split that hair more finely.  
14                  What about evidence concerning public consultation in  
15                  the land use planning process. Is that something that  
16                  we will be hearing in a future panel, or have we now  
17                  heard it?

18                  MR. FREIDIN: You have heard the evidence  
19                  that we intend to lead in relation to that matter, Mr.  
20                  Chairman.

21                  MR. COLBORNE: Thank you.

22                  MR. FREIDIN: Subject, of course, to any  
23                  reply evidence on something which may come out during  
24                  the case of the other parties.

25                  MR. HUNTER: My difficulty is, Mr.



1 Chairman, I don't have the file here on that subject;  
2 that is, what my clients wrote to MNR starting in '84,  
3 '85.

4 THE CHAIRMAN: Well...

5 MR. HUNTER: I will just have to try to  
6 deal with it in another panel.

7 THE CHAIRMAN: Well, right after lunch,  
8 as you are probably aware, I thought we were going to  
9 deal with the issue upon the distinction between forest  
10 management and timber management, starting off perhaps  
11 with Ministry of the Environment and then getting the  
12 Ministry of Natural Resources' position and then, as I  
13 understood it from our discussions yesterday, continue  
14 on with your cross-examination and any other  
15 cross-examinations and perhaps come back, if things  
16 haven't been resolved with the two submissions, at a  
17 later date with other parties who may want to comment.

18 That was my understanding of the  
19 procedure that was set up yesterday.

20 MR. HUNTER: No. I was just concerned  
21 because, if I understand Mr. Freidin, he has led  
22 evidence in relationship to the preconsultation  
23 process. I don't have a file here.

24 THE CHAIRMAN: Well, what I am suggesting  
25 is there may be a possibility you may still be with us

1 tomorrow in cross-examination.

2 MR. HUNTER: That would really cause me  
3 some very serious problems.

4 THE CHAIRMAN: Well, I am not sure how  
5 long this is going to go after the lunch break, but  
6 conceivably you may not finish today -- well, maybe you  
7 will finish today.

8 MR. HUNTER: Mr. Chairman, I have a trial  
9 on Friday morning in London, Ontario that I have to  
10 prepare for.

11 MR. FREIDIN: Although it will be  
12 apparent, if one looked at the record.

13 Just to make it clear, the Ministry did  
14 not lead any evidence in relation to presubmission  
15 consultation that came out during the cross-examination  
16 of this panel.

17 And just so people know, we are  
18 content -- or the Ministry is content that if there are  
19 people or people who are going to make submissions this  
20 afternoon who feel that they would prefer to have the  
21 panel absent during those submissions, we are content  
22 with that, if that is still a concern.

23 We have no objection to the panel leaving  
24 the hearing room while those submissions are made.

25 THE CHAIRMAN: What is the sense of

1 counsel here with respect to the exclusion of the  
2 panel, other than I know you expressed that concern  
3 yesterday Mr. Edwards.

4 MR. EDWARDS: I think my concern is a  
5 little redundant in light of Mr. Castrilli  
6 cross-examining.

7 I don't have a concern which I had  
8 yesterday.

9 THE CHAIRMAN: I think, under the  
10 circumstances, I frankly cannot see a lot of prejudice  
11 with having not excluded them, so I would suggest that  
12 we will enter this discussion this afternoon and they  
13 will be here.

14 Okay. I think at this point it is an  
15 appropriate time to break for lunch. We will return at  
16 2:00 p.m.

17 ---Luncheon Recess at 12:35 p.m.

18 ---Upon resuming at 2:05 p.m.

19 THE CHAIRMAN: Excuse me, ladies and  
20 gentlemen, I seem to have forgotten my hearing book.  
21 Please sit down and we will carry on in a minute.

22 ---Discussion off the record

23 THE CHAIRMAN: I apologize, ladies and  
24 gentlemen.

25 We now want to deal with the issues of

1 clarification.

2 Mr. Freidin?

3 MR. FREIDIN: One matter. Ms. Murphy  
4 would like to get some direction in relation to this  
5 matter of this panel, Panel No. 5, as soon as possible  
6 because she was hoping to, I believe, serve the  
7 document today with the accompanying information in the  
8 letter form, and I am just wondering if that can be  
9 dealt with now as opposed to after hearing the  
10 submissions on the other matter?

11 THE CHAIRMAN: Well, I do not think the  
12 Board has really reviewed this documentation in detail  
13 yet. I do not know if the other parties have had an  
14 opportunity to do that, perhaps we could just ask.

15 Have any of the parties, or all of the  
16 parties here, had a chance to review Ms. Murphy's  
17 documentation?

18 (No response)

19 Would it be possible for the parties to  
20 quickly review this at the time of the afternoon break  
21 and, if there are any comments that will not take very  
22 long, we could deal with those right away, and then the  
23 Board could consider it and perhaps give you some  
24 direction before we rise today.

25 Now, are you going to go first, Mr.



1 Campbell?

2 MR. CAMPBELL: I think that's the  
3 intention, Mr. Chairman.

4 Mr. Chairman, the remarks that I will be  
5 making arise from discussions in the transcript that  
6 can be found at Volume III, the May 12th transcript,  
7 pages 346 to 358; and Volume IV, the transcript of  
8 Friday the 13th, at pages 513 to 516.

9 And having reviewed those transcript  
10 sections, I would characterize the matters on which  
11 submissions are being requested into two questions  
12 really.

13 The first question is as follows: How,  
14 if at all, is the Board's jurisdiction affected by the  
15 list of exemptions and approvals included at pages 35  
16 to 38 of Exhibit 6.

17 And the second question would be: How,  
18 if at all, is the Board's jurisdiction affected by  
19 Exemption Order 11-9, the text of which is included at  
20 pages 18 to 22 of Exhibit 6A and, in particular, by the  
21 use of the term 'forest management' in paragraph 8 of  
22 that Order.

23 Now, I would like to deal with the first  
24 question first.

25 It is our submission that the various

1 orders listed have no impact on and are not relevant to  
2 the duties and obligations of this Board; and that  
3 submission is based on some simple, straightforward  
4 logic; and the starting point is: To examine the  
5 obligations and duties of this Board under the  
6 Environmental Assessment Act.

7 It is clear, in my submission, that the  
8 Board must consider a broad range of factors, including  
9 the full range of effects on the environment as that  
10 term is broadly defined; that's the Board's statutory  
11 duty and obligation.

12 And, on the other hand, the orders in  
13 question are simply aimed -- the orders are simply  
14 aimed at permitting certain activities to be carried  
15 out by the Ministry of Natural Resources.

16 In the case of the exemption orders,  
17 those exemption orders simply permit those activities  
18 to be carried out without being subject to the normal  
19 process contemplated by the Environmental Assessment  
20 Act.

21 So the only pertinent question for the  
22 Board, in my submission, is whether there is anything  
23 in any of those orders which specifically relieves this  
24 Board of its statutory obligations in relation to the  
25 undertaking that is before it.

1                   I believe it is common ground between the  
2           Ministry of Natural Resources and the Ministry of the  
3           Environment, and it is the position of the Ministry of  
4           the Environment, that there is no wording in any of the  
5           exemption orders or any of the other orders listed on  
6           pages 35 to 38 of Exhibit 6 which relieves the Board of  
7           any of its statutory obligations.

8                   THE CHAIRMAN: Is that MNR's position as  
9           well?

10                  MR. CAMPBELL: That is my understanding,  
11           and I am sure their counsel will be addressing that  
12           matter.

13                  THE CHAIRMAN: Okay.

14                  MR. CAMPBELL: Now, in the complete  
15           absence of any such wording the Board must, in our  
16           submission, meet the full range of its responsibilities  
17           under the Act without restriction and, in my  
18           submission, this position is supported by noting that  
19           from time to time exemption orders are passed with the  
20           express purpose of removing certain issues from the  
21           normal course of the EA hearing and approval process.

22                  But there is no such wording in any of  
23           the referenced orders and, in my submission, there is  
24           no jurisdiction in the Board to impute any such intent  
25           into those orders.

1                   And, Mr. Chairman, those are my  
2                   submissions on what I characterize as the first  
3                   question.

4                   I want to turn then to the second  
5                   question which is: How, if at all, is the Board's  
6                   jurisdiction affected by Exemption Order No. 11-9, the  
7                   text of which is included at pages 18 to 22 of Exhibit  
8                   6A and, in particular, by the use the term 'forest  
9                   management' in paragraph 8 of that order.

10                  Now, before turning to the particular of  
11                  the question, I should advise the Board that I have now  
12                  had an opportunity to review this matter with Ministry  
13                  of the Environment staff and I am able to advise the  
14                  Board that the EA before this Board covers the same  
15                  activities as the EA which was expected at the time the  
16                  exemption was issued.

17                  THE CHAIRMAN: All right, let's just  
18                  repeat that for a second. The EA before the Board  
19                  covers the same activity..?

20                  MR. CAMPBELL: The same activities as the  
21                  EA which was expected at the time the exemption was  
22                  issued.

23                  However, that really has nothing to do  
24                  with the second question, but it is a point on which I  
25                  believe the Board wished clarification.



1                   Returning to the second question, in our  
2                   submission, it is simply a question which need not  
3                   concern this Board. The Board has an application  
4                   before it; the Board has a statutory duty to deal with  
5                   that application; and, in our submission, the efficacy  
6                   or otherwise of the exemption order is irrelevant to  
7                   the Board's task.

8                   In the eyes of some the question may be  
9                   an interesting question but, in our submission, it is  
10                  not a relevant question for this Board. And I should  
11                  add that there are a host of relevant issues to be  
12                  dealt with in this proceeding, and it is our  
13                  recommendation to the Board that we proceed with those  
14                  relevant issues without adding issues which are not  
15                  relevant.

16                  Now, subject to any questions which the  
17                  Board may have, those are our submissions.

18                  THE CHAIRMAN: Well, the Board wants to  
19                  thank you for your submissions, Mr. Campbell, but there  
20                  is still some questions, I guess, as to what then is  
21                  relevant in the sense that, if the Board is obliged to  
22                  exercise its obligation under the Act - which, of  
23                  course, it does not deny; that is, its obligation and  
24                  within its jurisdiction - and the Ministry of Natural  
25                  Resources has defined the undertaking in terms of

1 timber management dealing specifically with four  
2 aspects of that, and they have listed the four major  
3 topics that they want to approach the assessment from,  
4 what is the position of the Board with respect to other  
5 parties that may wish to go beyond those four aspects?

6 Well, in a sense that the Board is  
7 required, under the Act, to look at all reasonable  
8 alternatives, both to the undertaking and in connection  
9 with the manner in which the undertaking is carried  
10 out, but is there a line to be drawn when some of those  
11 alternatives go beyond the four issues or four topics  
12 by which the proponent proposes to deal with its  
13 assessment on timber management?

14 MR. CAMPBELL: Mr. Chairman, I don't  
15 think those concerns need trouble the Board at all.

16 THE CHAIRMAN: Okay.

17 MR. CAMPBELL: The undertaking is a  
18 defined set of activities and, in my submission, the  
19 proponent - it is both the proponent's obligation but  
20 also his right to define the undertaking, but all that  
21 does is say: What is it we are seeking approval of;  
22 that is, we want at the end an approval of this thing  
23 called an undertaking.

24 In the course of deciding whether to give  
25 that approval or to give it subject to terms and

1 conditions, or to amend the EA and give it - all those  
2 courses of action are open to the Board - in the course  
3 of making those determinations, the Board has to look  
4 at alternatives to, alternative methods, effects on the  
5 environment, all of those things the Board is required  
6 to look at.

7 And I suppose there is -- it is  
8 conceivable that you could introduce other resource  
9 considerations that are so irrelevant to the approval  
10 that is being sought that they somehow are excluded  
11 from consideration on the basis of the normal test of  
12 relevance. But given as well, that the proponent has  
13 stated and has made as part of its case -- as a  
14 cornerstone of its case, as I read the documentation, a  
15 philosophy of integrated resource management, it is  
16 absolutely clear in my submission that both because of  
17 the obligations of the legislation and because of the  
18 proponent's own case, that other considerations, other  
19 resource considerations are necessarily part of the  
20 Board's examination.

21 And I do not see any of the kinds of  
22 concerns you are raising, and it is our submission that  
23 the scope of the Board's examination is not limited by  
24 those concerns.

25 THE CHAIRMAN: But, just to use an

1       example that I think came up either today or yesterday,  
2       I think one of the witnesses indicated - or perhaps it  
3       was Mr. Freidin that indicated - that one of the issues  
4       that was not before the Board was a consideration of  
5       the planning process above the timber management plan  
6       area of planning.

7                       In other words, we weren't to be  
8       considering the planning process at the regional or  
9       provincial level because that was not related to the  
10      undertaking described as that of timber management, and  
11      we were to be looking at -- or it would be within our  
12      jurisdiction to look at the timber management plans and  
13      the planning process associated with those plans.

14                     Now, if that is the case, we have heard  
15      some evidence in the last three or four days about how  
16      there is integration, so to speak, between the planning  
17      that affects directly the timber management plan at the  
18      district level and the planning considerations that go  
19      into those plans from other levels, such as at the  
20      regional level and even the provincial level, and that  
21      brings into the whole thing the matter of issues --  
22      sorry, targets and objectives and things like that.

23                     And if that is the case, then how can the  
24      Board properly appreciate the planning process at the  
25      district level without dealing, in some fashion, with



1 the planning process at other levels which impact on  
2 that district process, as an example?

3 MR. CAMPBELL: I think it is an excellent  
4 example, Mr. Chairman, and I think our response to that  
5 would be: We have to remember what it is the proponent  
6 is asking for approval of; it is asking for approval of  
7 matters relating to timber management planning.

8 Now, the proponent has made, as part of  
9 its case -- or has included as part of its case, a  
10 description of how it goes about doing various levels  
11 of planning which impact on, eventually, timber  
12 management planning. That, as I take it, has been a  
13 large part of the purpose of this first panel.

14 Now, in putting forward that case, they  
15 are not asking for approval or otherwise from this  
16 Board for those different plans; what they are saying  
17 is: It is within the context of those that we are  
18 doing timber management planning. Those plans  
19 represent the proponent's judgment of the framework  
20 within which that planning should take place.

21 That's not to say it is binding on the  
22 Board, but they are putting forward their case as to  
23 the context in which they are submitting that timber  
24 management should take place, and the Board will have  
25 to consider that, assess it, determine whether it has,

1 in the Board's view, that is a meritorious framework  
2 and, in the end, hear submissions as to whether, within  
3 all of that, timber management should proceed in the  
4 way that it is proposed.

5 THE CHAIRMAN: Well, put it this way,  
6 let's again sort of use an example, not entirely  
7 hypothetical but based on this discussion we are now  
8 having: If the Board should find, after the whole case  
9 is in, that there are some deficiencies at a planning  
10 level other than at the district level, would it be  
11 within the Board's jurisdiction in, say as an example,  
12 approving the undertaking, approving the timber  
13 management activity to set out conditions of approval  
14 which impact directly on another planning level because  
15 that, for example, is where the Board thinks that the  
16 problem is.

17 MR. CAMPBELL: In our submission, Mr.  
18 Chairman, the answer to that question would be yes.

19 THE CHAIRMAN: And that would be, in your  
20 submission, binding, in effect, on the other planning  
21 level if they wanted to proceed with the timber  
22 management undertaking?

23 MR. CAMPBELL: A proponent is always  
24 faced with the fact that the approval that comes out at  
25 the end may be subject to terms and conditions and the

1       proponent has a choice then.

2                   The proponent can say: I choose to take  
3       up this approval with its terms and conditions, or I  
4       will follow -- there are other courses of actions open  
5       to it; it can appeal the terms and conditions, it can  
6       choose not to take up the approval.

7                   The fact of the matter is, that the  
8       Board's jurisdiction in imposing terms and conditions  
9       is unfettered by anything that's before it and, in my  
10      submission, it boils down to just a common sense test.

11                  THE CHAIRMAN: Well, it is unfettered in  
12      the sense that the statutory provision dealing with  
13      conditions of approval, in its wording, appears to be  
14      unfettered, but it must be related to the undertaking  
15      as proposed.

16                  MR. CAMPBELL: Of course, of course.

17                  THE CHAIRMAN: All right.

18                  MR. CAMPBELL: It must relate in some way  
19      to the job that the Board is given, which is to look at  
20      the effects on the environment, to decide whether terms  
21      and conditions are required to mitigate those effects  
22      on the environment.

23                  They have got to be in some way connected  
24      to the carrying out of the undertaking, they can't in  
25      the course of this say: By the way, we believe the

1 Minister's carpet should be green instead of red, and  
2 that's irrelevant, but if it is related to carrying out  
3 that undertaking, then fine.

4 It has the right to impose terms and  
5 conditions, and nothing in those orders that we have  
6 been talking about, and nothing in my submission, in  
7 any event, in the guidelines, either at the Strategic  
8 Land Use Planning Level or the District Land Use  
9 Guidelines fetters the Board's discretion in that  
10 regard.

11 My friend is quite properly saying: We  
12 have a logical framework in which these timber  
13 management plans are being developed, we think it is a  
14 good framework, we think it does an important planning  
15 job, and that no doubt is his position.

16 But it is -- while that is important, it  
17 is important also to recognize that that is his  
18 position and that does not remove jurisdiction from the  
19 Board.

20 MRS. KOVEN: Mr. Campbell, I have another  
21 example.

22 On page 37 of Exhibit 6, there is mention  
23 of access roads. As we know, in the definition of the  
24 undertaking of the Ministry of the Environment the  
25 first activity is access and there are -- well, there



1 is a mention of access roads to MNR facilities as being  
2 subject to the Class EA, and then there is another  
3 case, other access roads, case specific determination.

4 Does that have anything to do with an  
5 exemption, or is that part of the EA as well?

6 MR. CAMPBELL: I am looking at page 36?

7 MRS. KOVEN: 37.

8 MR. CAMPBELL: Oh, I am sorry.

9 I think I come back to what I said on my  
10 first -- in answering my first question, which is: To  
11 the extent that matters are exempted, they are  
12 activities that are permitted to take place without  
13 going through the particular process, but in terms of  
14 the access that is required for this undertaking, my  
15 understanding of the application - it is not my  
16 application - but my understanding of the application  
17 is that that is one of the phases of timber management  
18 in respect of which an approval is being sought.

19 And by so submitting that to this process  
20 and to this Board, that the Board has the right to  
21 impose what it considers sensible terms and conditions,  
22 whether or not they have anything to do with matters  
23 covered in other exemption orders.

24 THE CHAIRMAN: What about the position,  
25 Mr. Campbell, of other parties wanting to adduce

1 evidence of their own--

2 MR. CAMPBELL: Mr. Chairman, I thought I  
3 had two simple questions here, and I am fast getting  
4 over my head, but I will do my best.

5 THE CHAIRMAN: --other parties wanting to  
6 adduce evidence of their own on other forest-related  
7 activity that does not specifically deal with timber  
8 management and the four heads put forward by the  
9 Ministry of Natural Resources.

10 Because it is related in some sense, or  
11 there may be an impact in some sense on a proponent's  
12 proposed undertaking, should the Board be considering  
13 that evidence as well, notwithstanding it does not  
14 appear, or not being dealt with in the Ministry's  
15 application itself?

16 MR. CAMPBELL: I think the answer to that  
17 is clearly yes. To the extent that timber management  
18 will have an impact on a resource or has a significant  
19 potential for having an impact on another resource  
20 value, my submission would be, yes, the answer to that  
21 is clearly yes.

22 THE CHAIRMAN: And if the Board does  
23 consider that evidence and it is not included within  
24 the Ministry's EA documentation or otherwise dealt with  
25 through testimony at the hearing itself, would there be

1 an argument, in your view, that the assessment is  
2 unacceptable or inadequate because it did not deal with  
3 every aspect that could somehow be related to the  
4 activity for which they are seeking approval?

5 MR. CAMPBELL: Well, I suppose there can  
6 always be an argument about that, Mr. Chairman, but  
7 generally speaking, my experience is what happens is,  
8 is that in the course of leading evidence to point out  
9 a deficiency that is foreseen, if sufficient evidence  
10 is given about that resource value or matter, such that  
11 the Board finds itself in a position to make a  
12 determination on that matter, and the choices that are  
13 open to it at that time are: Amend and accept, terms  
14 and conditions, there are a number of mechanisms which  
15 the Board can use to address that matter.

16 I should also say that the Board -- this  
17 Board, various panels of this Board either sitting as  
18 the Environmental Assessment Board or in a Consolidated  
19 Hearing format has consistently and regularly held that  
20 at the end of the process, in determining whether an  
21 environmental assessment is acceptable, you don't just  
22 look at the document anymore, you look at the evidence  
23 that has come before the Board and it is the totality  
24 of that evidence that the Board uses in making its  
25 judgments on that matter.

1                   THE CHAIRMAN: I think this panel stated  
2                   that principle clearly at the outset of this very  
3                   hearing itself.

4                   MR. CAMPBELL: I have never heard any  
5                   serious objection taken to that principle in any  
6                   hearing, Mr. Chairman.

7                   THE CHAIRMAN: Okay.

8                   MR. CAMPBELL: Thank you, Mr. Chairman.

9                   THE CHAIRMAN: Thank you, Mr. Campbell.  
10                  Mr. Freidin?

11                  MR. FREIDIN: Mr. Chairman, I can  
12                  indicate that I endorse what my friend has said in  
13                  relation to the jurisdiction of the Board, but I would  
14                  like to address the question that you posed, and that  
15                  was whether in fact other parties would somehow be  
16                  restricted in terms of the type of evidence that they  
17                  may want to adduce.

18                  I take it when you asked that question  
19                  and when other people raise that question, they are  
20                  wondering whether in some way there will be a  
21                  restriction on the evidence to describe the total  
22                  environment potentially affected by the undertaking as  
23                  defined.

24                  And I should make it quite clear that the  
25                  proponent clearly sees it as one of its obligations to



1 describe the environment affected and, for that  
2 purpose, or because of that, the Ministry has to  
3 describe the fishery resource, what is out there in  
4 terms of wildlife, what is out there in terms of  
5 various communities, the type -- the people who live in  
6 the area of the undertaking who might be potentially  
7 affected.

8 . So there is -- I should make it quite  
9 clear, the Board should not feel that there is any  
10 restriction in terms of hearing evidence in relation to  
11 those matters.

12 I believe, however, that there is a  
13 distinction between hearing evidence in relation to  
14 those things, a description of the environment  
15 potentially affected so that you can then understand  
16 evidence as to how the activities for which approval is  
17 being sought might affect those other parts of the  
18 environment.

19 That is different than entering into an  
20 enquiry as to how those other resources are managed; it  
21 is different than asking the question: Do we agree  
22 with the objective of the Ministry in relation to the  
23 management of wildlife, et cetera.

24 THE CHAIRMAN: And I take it, by  
25 extension, you are indicating that an enquiry of that

1 nature should be restricted?

2 MR. FREIDIN: Yes.

3 You raised, as an example, the discussion  
4 about the land use planning exercise. It was not my  
5 intention to indicate that a discussion of the land use  
6 planning exercise was irrelevant and that the Board  
7 shouldn't hear evidence on that; I mean, we led  
8 evidence on that.

9 I am not saying that the Board should not  
10 be hearing evidence on certain policy matters; those  
11 things were led and referred to by this panel and will  
12 be referred to by other panels to describe, I believe  
13 as Mr. Campbell put it, the context in which the  
14 activities for which approval is being sought are  
15 planned for and are implemented.

16 It also seems to me, Mr. Chairman, that  
17 any terms or conditions that you might wish to impose  
18 because of a concern about the potential effect or an  
19 actual effect of the activities on the whole  
20 environment, that those terms or conditions, in all  
21 likelihood, would properly be connected to carrying out  
22 of the undertaking. They would be a term or condition  
23 that would relate to the specific timber management  
24 planning process which will be discussed at some length  
25 throughout these hearings.

1                   In terms of the forest versus timber  
2           wording in the environmental -- pardon me, in the  
3           Ministry exemption order, first of all, as a point of  
4           clarification - not so much for the Board, but to make  
5           sure that everyone understands the Ministry's  
6           position - that those orders, whether they be exemption  
7           orders or whether they be approvals, approvals or  
8           orders which are issued by the Minister of the  
9           Environment with the approval of Cabinet, they are not  
10          exemption orders which are in any way passed by the  
11          Ministry of Natural Resources.

12                   The Ministry of Natural Resources has  
13          sought -- realizes that coverage is required under the  
14          Environmental Assessment Act and has requested coverage  
15          in various forms from the Minister of the Environment.

16                   THE CHAIRMAN: So is it your view as  
17          well, Mr. Freidin, that all of these exemption orders  
18          or approvals merely allow the activity that you are  
19          carrying on at the present time to be carried on  
20          without going through an EA process specifically  
21          described in these orders?

22                   MR. FREIDIN: If they are exemption  
23          orders.

24                   THE CHAIRMAN: If they are exemption  
25          orders, and that does not take away or remove from the

1 process anything in connection with the application  
2 before us?

3 MR. FREIDIN: In terms of the type of  
4 evidence you will hear, I don't think so.

5 To give you an example, there is an  
6 exemption I think here, or some sort of coverage for  
7 fish hatcheries - or maybe it was fish management for  
8 fisheries - that doesn't mean that the proponent,  
9 because there is an exemption order in relation to fish  
10 of some sort, that this Board can't hear any evidence  
11 about fish.

12 I mean, we have to lead evidence to  
13 describe what that resource is or what that part of the  
14 environment is and indicate whether that part of the  
15 environment is affected or potentially affected by the  
16 activities.

17 So I want to make it quite clear, you can  
18 hear evidence about all of those things,  
19 notwithstanding these exemption orders. I mean, those  
20 have no effect in terms of wanting -- how do you get  
21 information before describing those aspects of the  
22 environment. Without that information, how could you  
23 possibly determine whether the activities had any  
24 potential effect on them.

25 And just in terms of the forest versus



1 timber, I think the witnesses have indicated this in  
2 their evidence, but the term forest management and  
3 timber management are synonymous, in my submission, and  
4 if I could just give you one example.

5 Forest management agreements are  
6 agreements between the Crown and companies who engage  
7 in certain activities in the forest. Those companies I  
8 am referring to are companies which are part of the  
9 forest products industries; the activities that those  
10 agreements deal with are the activities of access,  
11 harvest, renewal and maintenance. They are called  
12 forest management agreements and, in my respectful  
13 submission, those are my submissions.

14 THE CHAIRMAN: Thank you.

15 Thank you, Mr. Freidin.

16 Does anyone else wish to quickly comment  
17 before we go into Mr. Hunter's cross-examination.

18 I indicated that if any other party had a  
19 very brief comment to make on these two submissions, at  
20 this time, we might consider it if it would not take  
21 very long and, otherwise, we will consider this  
22 clarification and indicate whether or not we feel there  
23 should be further discussion on it at a later date.

24 MR. HUNTER: Mr. Chairman, I do have a  
25 few comments.

1 THE CHAIRMAN: Very well.

2 MR. HUNTER: As I indicated yesterday -  
3 Mr. Campbell wasn't present - that I would have  
4 preferred to have approached this issue through cross  
5 in order to get information before you, but I do feel  
6 compelled, given the fact that the subject has been  
7 raised, to draw to your attention some substantial  
8 concerns that we have.

9 Mr. Chairman, perhaps I will go to the  
10 map and this may help.

11 Can you see that, Mr. Chairman?

12 THE CHAIRMAN: Yes I can, thank you.

13 MR. HUNTER: The 1985 Document which was  
14 submitted to you, I believe you will find the map in  
15 that document when it is filed as an exhibit, will show  
16 that the original of the undertaking...

17 MR. WILLIAMS: Sorry, Mr. Chairman, could  
18 Mr. Hunter move around the other side so we have the  
19 benefit of...

20 MR. HUNTER: I am not sure I can serve  
21 all masters, but I will try.

22 MR. WILLIAMS: Just move around the other  
23 side, just yourself.

24 MR. HUNTER: You want me on the other  
25 side?

1 MR. CAMPBELL: It is the map we want.

2 MR. HUNTER: The map, you don't...

3 The original area of the undertaking - I  
4 am not sure I am absolutely precise in this  
5 description - started, the northern boundary commenced  
6 in Albany, proceeded north at some point around here,  
7 and then proceeded across the 52nd parallel.

8 The present definition of the undertaking  
9 in the 1987 Document is this thin red line. There is a  
10 substantial area that has been removed from the  
11 undertaking, the original undertaking of 1985.

12 I draw your attention to the Exemption  
13 Order, MNR-11/9 and it is stated there:

14 "Having received a request from the  
15 Minister of Natural Resources that an  
16 undertaking --"

17 I apologize, page 18.

18 MR. MARTEL: Thank you.

19 THE CHAIRMAN: Exhibit 6A?

20 MR. HUNTER: That is correct, sir.

21 "Having received a request from the  
22 Minister of Natural Resources that an  
23 undertaking; namely, forest management by  
24 the Ministry of Natural Resources on  
25 Crown land presently included within

1 forest management units and associated  
2 tree nurseries..."

3 The area that has now been excluded from  
4 the geographic area of the undertaking is one which  
5 contains a substantial number of forest management  
6 units.

7 I will be entering this map as evidence.  
8 We only have one copy and simply received it today. It  
9 was prepared by the Ministry of Natural Resources for  
10 purposes of negotiation between my client, the Province  
11 of Ontario, and the federal government under something  
12 called the Memorandum of Understanding, and I am not  
13 familiar with that.

14 That map identifies a substantial number  
15 of management units. There are also in those areas a  
16 substantial number of native communities.

17 Our view is, with respect to the  
18 exemption order, that it was clearly understood  
19 pursuant to Order-in-Council and clearly understood by  
20 the Ministry of Natural Resources that this was to be  
21 within the geographic area of the undertaking.

22 THE CHAIRMAN: Those parts which were  
23 exempted? Sorry, those parts...

24 MR. HUNTER: The original area, Mr.  
25 Chairman, yes.



1 THE CHAIRMAN: Okay.

2 MR. HUNTER: Therefore, we believe that  
3 the proponent has not met a substantial requirement of  
4 the undertaking, that it is very questionable whether  
5 the Ministry could amend such a substantial requirement  
6 without obtaining an amendment to the actual exemption  
7 and Order-in-Council.

8 Third, we are of the view that the  
9 position taken by the Ministry constitutes potential  
10 substantial unfairness. I draw your attention to page  
11 11 of the 1987 Class Assessment Document at the very  
12 top, lines 1 through 3 - the little book - page 11 in  
13 Part I.

14 As I said, Mr. Chairman, Mr. Martel --

15 MR. MARTEL: I don't have it. I am just  
16 wondering if you just tell me what the sentence says,  
17 maybe I could...

18 MR. HUNTER: It says: "In the future..."

19 MR. MARTEL: Okay.

20 MR. HUNTER: "...the undertaking may also  
21 occur..."

22 Excuse me, I will start again:

23 "In future the undertaking may also occur  
24 on any other Crown lands in Ontario which  
25 may be added to the area of designated

1 forest management units."

2 That particular sentence leaves us cold.

3 MNR is requesting you to approve not only this  
4 undertaking, but an amending Procedure which, if  
5 accepted by this Board, could effectively preclude any  
6 native community from participating in any planning  
7 with respect to those FMUs.

8 It seems to us, Mr. Chairman, that you  
9 are faced with two choices: One, that MNR be required  
10 to change the geographical area of the undertaking to  
11 include those FMUs which, as we have stated, were  
12 originally in the Class Assessment and which we believe  
13 are required to be incorporated into the undertaking  
14 pursuant to that exemption order, notice be given to  
15 the communities in that area and the hearing be  
16 re-commenced at an appropriate point in time.

17 The second option is that the proponent  
18 remove the entirely that statement as identified on  
19 page 11 and re-inserts into the undertaking a clearly  
20 defined procedure, which is acceptable to my clients,  
21 with respect to timbering activity in those FMUs.

22 Those are my submissions, Mr. Chairman.

23 THE CHAIRMAN: Thank you.

24 Just one moment. That is fine. I just  
25 want to complete what you -- your last point. Clearly

1 defined procedures acceptable to your clients?

2 MR. HUNTER: That's correct, Mr.  
3 Chairman.

4 THE CHAIRMAN: What was the rest of that  
5 sentence?

6 MR. MARTEL: If you have it, if you  
7 recall.

8 THE CHAIRMAN: With respect to...?

9 MR. HUNTER: Oh, my client's ability to  
10 participate in timber management planning in those  
11 areas of the undertaking.

12 I would point out one additional comment  
13 and I believe that I am taking licence, but I don't  
14 think that there will be any contradiction with respect  
15 to the facts of the evidence.

16 Substantial portions: Red Lake, Sioux  
17 Lookout, Geraldton and Moosonee are without District  
18 Land Use Guidelines and the recent announcement by the  
19 Ministers today of putting in substantial number of  
20 parks in northwestern Ontario without any degree of  
21 consultation, involvement with my clients, simply  
22 points to their vulnerability with respect to any  
23 planning processes in northern Ontario.

24 And the same issue, Mr. Chairman, is  
25 raised with respect to those FMUs.

1 THE CHAIRMAN: Thank you, Mr. Hunter.

2 MR. HUNTER: Thanks, Mr. Chairman.

3 THE CHAIRMAN: Mr. Campbell, do you want  
4 to...

5 MR. CAMPBELL: If no one else wishes to  
6 make submissions, I have two comments that I would like  
7 to make.

8 THE CHAIRMAN: Well, Just a moment, I  
9 think some others may want to make submissions on what  
10 Mr. Hunter said.

11 Mr. Tuer?

12 MR. TUER: Mr. Chairman, I just wanted to  
13 speak briefly of endorsement of the position of the  
14 Ministry of Natural Resources as to the scope of the  
15 enquiry of this hearing.

16 The EA Document sets out the four topics  
17 to be dealt with in the proposal and clearly  
18 anticipates, as does the evidence we have been hearing,  
19 that there will be discussion of other environmental  
20 activities -- forestry activities that interface with  
21 those four topics.

22 And I agree that so as far as there is an  
23 interface between and among activities in the forest  
24 with the proposal of the proponent, that that evidence  
25 is clearly -- clearly has to be before you and I think



1       everybody anticipated that.

2                       However, I agree with the distinction  
3       made by Mr. Freidin, that this hearing should not be  
4       concerned with a study or enquiry or investigation of  
5       the management of those other resources or activities.  
6       That clearly that is not part of the proposal, it is  
7       not part of the undertaking --

8                       THE CHAIRMAN:   Except insofar as the  
9       management of other resources impact on the management  
10      of this resource.   Would you go that far?

11                      MR. TUER:   Yes, sir, I accept that.   if  
12      they interface, then the enquiry should go that far,  
13      you are entitled to enquire to that extent, but that is  
14      the extent of it, in my submission.

15                      So far as the distinction between forest  
16      and timber is concerned, as far as I am concerned, that  
17      is mere semantics and, whether it is called one or the  
18      other, I don't think affects the scope of the enquiry  
19      nor your jurisdiction.

20                      Thank you.

21                      THE CHAIRMAN:   Thank you.

22                      Does anyone wish to comment on Mr.  
23      Hunter's submissions to the Board at this point?

24                      Mr. Colborne?

25                      MR. COLBORNE:   I have submissions, but

1       they are somewhat different from Mr. Hunter's.

2                       They are brief, but I am not sure what  
3       order you want to deal with these submissions on.

4                       THE CHAIRMAN: Is it connected with the  
5       Board's jurisdiction and, sort of, the issues that we  
6       are dealing with?

7                       MR. COLBORNE: Yes.

8                       THE CHAIRMAN: Well, perhaps we could  
9       hear from you, Mr. Colborne, and then we would allow  
10      both ministries a chance to respond, if they wished, to  
11      both of you, if that would be acceptable.

12                      MR. COLBORNE: Thank you. My concern, as  
13      I mentioned...

14                      THE CHAIRMAN: Could you come to the  
15      microphone, please, so that others can hear you.

16                      MR. COLBORNE: Certainly.

17                      My concern, as I mentioned, is somewhat  
18      different from Mr. Hunter's but directly on the point  
19      which is now being discussed and, as a matter of fact,  
20      raised I think directly by yourself, Mr. Chairman.

21                      I am concerned more with what type of  
22      evidence would be admissible and what type of evidence  
23      will be called, what type of cross-examination and so  
24      on will be permitted.

25                      I do not think that the distinction

1       between timber management and forest management is a  
2       distinction without a difference. I think it is a very  
3       calculated distinction. And I fear that it is  
4       calculated in order to define my client's interests out  
5       of existence as far as this Board is concerned.

6                       I think that not merely because of other  
7       matters, which I hope will come before you, in terms of  
8       the way the Ministry of Natural Resources has acted in  
9       instances which I think are relevant to this testimony  
10      before this Board, but also I think so because of  
11      points that are already on the record.

12                     This question arose last Thursday when  
13      Mr. Monzon was on the stand and I would like to read  
14      his answer to Mr. Freidin's question that led to the  
15      concern that is now before the Board.

16                     The question was -- and this is at page  
17      345 of the transcript.

18                     THE CHAIRMAN: Sorry, what transcript  
19      number is that?

20                     MR. COLBORNE: This would be the Volume  
21      III.

22                     THE CHAIRMAN: III?

23                     MR. COLBORNE: Volume III for Thursday,  
24      May 12th, 1988.

25                     THE CHAIRMAN: At page what?

1 MR. COLBORNE: 345, at line 11:

2 "Q. Why the change in the name from  
3 forest management to timber management?

4 A. The reason for the change goes back  
5 to presubmission consultations which were  
6 started in 1983, and at that point we  
7 became quite concerned about the  
8 perception that there was with the  
9 stakeholders who were interested in this  
10 class environmental assessment as to  
11 their understanding of the scope of the  
12 undertaking."

13 Now, I think that Mr. Monzon is referring  
14 to Indians as among the stakeholders, I think he has  
15 already said that, and I have already advised the Board  
16 that my client's interest is the interest of status  
17 Indians and it is not just perception, but it can also  
18 go to a matter of evidence that the Board should admit  
19 and in whatever consideration the Board gives to the  
20 submissions that have now been made, I would ask you to  
21 attend especially to the question of what you will be  
22 admitting and where you are going to be drawing this  
23 line, because there will be a line.

24 And I am predicting many, many objections  
25 until the line is established. Because, quite frankly,



1 my clients are here to deal with a number of things, I  
2 am here as their counsel to deal with a number of  
3 things which I am quite confident Mr. Freidin does not  
4 want mentioned; he does not want to have people on the  
5 stand that are going to be cross-examined on those  
6 things, and he does not want me to call evidence on  
7 those things. Where will the line to be drawn.

8 I don't want this calculated distinction  
9 to lead to the proponent's ability to duck out of  
10 cross-examination and I don't want it the lead to the  
11 proponent's ability to merely fail to call relevant  
12 evidence or to stand and oppose evidence that we feel  
13 is relevant because they have imposed or redefined this  
14 as a timber management enquiry as opposed to a forest  
15 management enquiry.

16 THE CHAIRMAN: Well, by the same token,  
17 Mr. Colborne, you appreciate that the proponent has  
18 structured its case in a particular fashion and it may  
19 wish to call evidence that it feels is necessary to  
20 support its case.

21 Now, it may fail in that endeavour in  
22 terms of the ultimate result if the Board, after  
23 considering all the evidence, does not feel that it has  
24 supported its case to the extent that it warrants an  
25 approval. That is up to the Board.

1                   You, of course, and any of the other  
2                   counsel, can call whatever evidence they wish to  
3                   support their side of the case, provided it falls  
4                   within the relevancy criteria and I do not see how  
5                   other parties in opposition can necessarily dictate  
6                   what evidence the proponent may or may not wish to  
7                   call.

8                   It may be that the Board wants some  
9                   further information on further topics as well and it  
10                  might be assisted in that way if the evidence is not  
11                  called.

12                  MR. COLBORNE: I agree, but I take  
13                  partial exception to that. The proponent in this case  
14                  does not run the risk of failure, it is not like a  
15                  plaintiff in a civil action which, if it does not prove  
16                  its case, does not get its award. The forest industry  
17                  is not going to be shut down and let's just face facts.

18                  THE CHAIRMAN: Well, I am not going to  
19                  discuss anything beyond what we consider to be the  
20                  jurisdiction of this Board and that is; if at end of  
21                  the case we decide that the environmental assessment is  
22                  unacceptable, I think we can come to the conclusion it  
23                  is unacceptable, period.

24                  MR. COLBORNE Yes.

25                  THE CHAIRMAN: And not amend it, if we

1       feel that the evidence does not warrant amendment, it  
2       is just inadequate.

3                       Secondly, I suppose we have the  
4       jurisdiction to accept the assessment and refuse  
5       approval to proceed. If we chose to do so based on the  
6       evidence.

7                       What happens to the industry or what  
8       happens beyond our decision, at the next level on  
9       appeal or something like that, is up to parties other  
10      than the Board.

11                      But I think you are presuming a lot at  
12      this stage of the game when we have barely gotten into  
13      the case.

14                      MR. COLBORNE I perhaps didn't make it  
15      clear. I was more concerned with the practical  
16      day-to-day questions of evidence which may arise and I  
17      am urging you to think about that.

18                      THE CHAIRMAN: We certainly will.

19                      Mr. Castrilli?

20                      MR. CASTRILLI: Mr. Chairman, all I  
21      wanted to say was that I wanted to reserve my right to  
22      speak on this matter at a subsequent date, I do not  
23      have instructions from my client at this time, and I  
24      understood that to be the situation prior to today.

25                      THE CHAIRMAN: Very well. As I say, I am

1 not sure whether this whole thing will be resolved  
2 today, but I think in fairness to the parties - and  
3 some of the parties were not here - we did indicate we  
4 would hear from basically the two ministries and  
5 anybody else who wanted to make some brief comments.

6 Mr. Williams, do you fall into that  
7 latter category?

8 MR. WILLIAMS: Sorry, as which...?

9 THE CHAIRMAN: As be willing to put  
10 forward brief comments at this time so that we can  
11 allow Mr. Hunter to get on with his cross-examination?

12 MR. WILLIAMS: Absolutely, I fall into  
13 that category.

14 THE CHAIRMAN: Very well.

15 MR. WILLIAMS: Mr. Chairman, I think my  
16 concern and that of my clients can be summarized in  
17 this fashion.

18 It seems to me that the definition scope  
19 of the undertaking is as much synonymous with the term  
20 scope of the hearing as has been suggested timber  
21 management is synonymous with forest management. I  
22 think in fact there is a very distinct and obvious  
23 difference.

24 It has been suggested by Mr. Freidin that  
25 timber management is synonymous with forest management.



1       That is a proposition that one can clearly argue with  
2       and I think could be refuted in argument.

3                   I don't propose to go into that argument  
4       at this point, simply point out to you that experts in  
5       the field, one who has been referred to at considerable  
6       length in this hearing, Gordon Baskerville himself, has  
7       suggested that timber management is simply a subset of  
8       forest management. I refer you to page 66 of his  
9       submission. There is a distinction to be made.

10                  My clients certainly see forest  
11       management as, of necessity, being broader than timber  
12       management. Timber management is an essentially  
13       important ingredient of forest management, but to  
14       suggest that they both have the same scope of  
15       definition and purpose, as I say, is arguable.

16                  The concerns I expressed at the outset of  
17       these hearings on behalf of my client was that the  
18       non-resource timber values would not receive the same  
19       consideration and be considered and weighted in the  
20       same way unless -- unless the broader approach to the  
21       issue is taken.

22                  I do agree with earlier comments that it  
23       would certainly appear in any event to be inappropriate  
24       to address some of the related issues and assess them  
25       on a critical basis, the same way in which the timber

1 management aspect, which is the undertaking, is to be  
2 criticized.

3 For the parties to go into an in-depth  
4 analysis and criticism of, say, moose management or  
5 fish management, as has been stated by others, would  
6 seem to be totally inappropriate.

7 On the other hand, the great concern is  
8 to have parties who want to deal with those issues as  
9 they relate to timber management have their positions  
10 in any way fettered or restricted on the basis of  
11 procedural argument that it exceeds the authority of  
12 the Board is the major concern, of course.

13 THE CHAIRMAN: Well, it also goes really  
14 to the practical consideration of what should be  
15 admitted and what the various parties can address in  
16 terms of issues. And, if as several parties have  
17 indicated, if the other non-timber issues or values  
18 relate to the activity of timber management, then it  
19 will appear that those would be part of this assessment  
20 and properly put before the Board.

21 And that would allow those who would like  
22 to see another use put to the forest, other than timber  
23 management, put their views forward, because it bears  
24 and is related directly to the activity for which the  
25 proponent is seeking approval.

1                   MR. WILLIAMS: I agree. I guess my  
2                   reservations, in your observation, would appear to  
3                   relate to those and be part of the material at hand.

4                   I would not like to see us go into these  
5                   proceedings and find that challenges are being made  
6                   because of introduction of evidence at the outset would  
7                   appear to go beyond the precise framework of the  
8                   undertaking as defined.

9                   THE CHAIRMAN: Well, it appears from the  
10                  submissions made today, that both the Ministry of  
11                  Natural Resources and the Ministry of the Environment  
12                  fully expect these other issues to be properly before  
13                  the Board and available to be canvassed by the parties,  
14                  as they relate in any way to the activity for which  
15                  approval is sought, and they certainly are not  
16                  objecting to that.

17                  One of the concerns of the Board was,  
18                  before we would entertain any kind of ruling when it  
19                  comes up, is to know what the position, at least of the  
20                  proponent is and of the Ministry of the Environment,  
21                  insofar far as the change in wording affected what we  
22                  would or would not view as a jurisdictional matter and  
23                  I think we have those views today and I do not think  
24                  their views are, in any way, prejudicing what you are  
25                  saying right now.

1                   MR. WILLIAMS: Well, I guess, Mr.  
2 Chairman, really it boils down to being comfortable in  
3 the knowledge that the non-timber resources or values  
4 will be permitted to receive the equal consideration as  
5 the timber resources and values that are the central  
6 part of the undertaking.

7                   THE CHAIRMAN: Well, it is not a  
8 non-timber resource for which approval is sought, it is  
9 a timber resource for which approval is sought.

10                  Obviously, that approval and what it is  
11 based on, will have to take into account everything  
12 that affects that particular resource, and there will  
13 an interrelationship, I think, of other resources.

14                  MR. WILLIAMS: It is the  
15 interrelationship and the linkage, that as long as that  
16 can be established...

17                  THE CHAIRMAN: As far as your comments on  
18 equality go, I do not think it is before the Board,  
19 from what I have heard and from what I understand, that  
20 we can approve the management or the activity related  
21 to another resource other than that related to timber  
22 management.

23                  MR. WILLIAMS: Could I just ask this one  
24 question then, Mr. Chairman: As an example, in dealing  
25 with timber management, if it was within the wisdom of



1 the Board to so decide that we are going to accept a  
2 certain element of the process, a certain condition of  
3 approval applied thereto that integrates with it as a  
4 guideline or as a control mechanism, another management  
5 process?

6 THE CHAIRMAN: Well, that may be, but  
7 that would be related, a condition of approval related  
8 to the approval of the activity of timber management.

9 MR. WILLIAMS: Yes.

10 THE CHAIRMAN: So you may have a  
11 condition that affects another resource.

12 MR. WILLIAMS: So you see that as  
13 something, as long as there is a clear relationship,  
14 that you would have the broad mandate to make use of  
15 other resource...

16 THE CHAIRMAN: I do not see anything in  
17 the Act or our jurisdiction that fetters our discretion  
18 to approve conditions of approval relative to the  
19 activity of timber management, and those conditions may  
20 impact on the management of another resource, as I  
21 understand the Board's jurisdiction.

22 Does that help?

23 MR. WILLIAMS: I think it is helpful.

24 Thank you, Mr. Chairman.

25 THE CHAIRMAN: Mr. Edwards?

1                   MR. EDWARDS: I would like to take the  
2 same position as Mr. Castrilli, I would like to get  
3 instructions and try and advise the Board of my  
4 client's position.

5                   THE CHAIRMAN: Very well.

6                   Is there anybody that wishes to comment  
7 on Mr. Hunter's submissions relative to the change in  
8 the defined area between the Draft EA and the one that  
9 is before us and the effect of the wording of the  
10 particular exemption order, other than the Ministry of  
11 Natural Resources and Ministry of the Environment?

12                   Is there anybody else who wishes to  
13 comment on Mr. Hunter's submissions?

14                   MR. WILLIAMS: I am sorry, Mr. Chairman.  
15 I, just for the record, wanted to make it clear that I  
16 still have not received instructions from my client on  
17 the matter, but you have given me certain information  
18 that's helpful to my discussing the matter with my  
19 client--

20                   THE CHAIRMAN: Very well.

21                   MR. WILLIAMS: --to make a final  
22 determination.

23                   THE CHAIRMAN: Mr. Freidin, then?

24                   MR. FREIDIN: Very briefly, in relation  
25 to the matters that Mr. Hunter made.

1 I don't believe that the Board is any way  
2 put in a position where it has got any choices to make  
3 as suggested by Mr. Hunter.

4 I would just like to make two points.

5 The area of the undertaking for which  
6 approval of timber management is being sought is set  
7 out in the environmental assessment. The fact that it  
8 may have, at one time, been a larger area is really  
9 irrelevant.

10 The matter before the Board is to  
11 determine whether approval for timber management will  
12 be given in the area for which the proponent -- in the  
13 area that the proponent has indicated in the EA.

14 THE CHAIRMAN: And I take it, if the  
15 Board accepts that position, that if it were to approve  
16 the undertaking, it could do what it wanted with  
17 respect to having this approval apply to any future  
18 areas?

19 MR. FREIDIN: That is correct. The  
20 position will be that if timber management is to  
21 occur -- if forest management units are created in  
22 another area, they would have to apply the same  
23 planning process and live by the same conditions that  
24 this Board might impose.

25 THE CHAIRMAN: Or that a further hearing

1       may be required if the Board does not wish to extend  
2       this approval beyond the area of the undertaking?

3                   MR. FREIDIN:   That's fine.

4                   THE CHAIRMAN:   If it so chose to do.

5                   MR. FREIDIN:   That would be a matter of  
6       submission somewhere way down the road.

7                   THE CHAIRMAN:   So the statement referred  
8       to by Mr. Hunter is basically in the form of a  
9       submission to the Board and a desire by the proponent  
10      that any approval that might issue from this Board also  
11      covers future areas, but no more than that?

12                  MR. FREIDIN:   As I understand it, I think  
13      that's correct.

14                  It will apply to those areas in the  
15      future which may be designated as management units and  
16      where timber management may occur.  Whether that is  
17      something that the Board feels is appropriate will be a  
18      matter of argument at the end of the case.

19                  Just one other matter.  The proponent  
20      will be leading evidence to explain that change in  
21      area.

22                  Thank you.

23                  THE CHAIRMAN:   Mr. Campbell?

24                  MR. CAMPBELL:   Thank you, Mr. Chairman.

25                  Turning to Mr. Hunter's point first, I



1 think I agree with my friend Mr. Freidin that one of  
2 the options that Mr. Hunter set out; that is, asking  
3 the Board to require MNR to go away and bring back some  
4 different application.

5 In my submission, the Board simply has no  
6 jurisdiction to do. The Board just must deal with the  
7 application before it.

8 The Board does have power to amend the  
9 environmental assessment before accepting it, and it  
10 does have the power to impose terms and conditions, and  
11 it seems to me that Mr. Hunter might well, at the end  
12 of this case, be making submissions as to what happens  
13 to areas above that red line or, rather, doesn't happen  
14 to them. That's the time for his submissions and the  
15 Board has authority certainly to deal with those  
16 submissions and exercise an appropriate judgment in  
17 that respect.

18 I think Mr. Freidin and I are also in  
19 complete agreement, if I understand him correctly, on  
20 the matter of the effect of the various District Land  
21 Use Guidelines and Strategic Land Use Plans.

22 And I understand the position to be that  
23 the Board can adopt terms and conditions, can approve  
24 terms and conditions which may well be inconsistent  
25 with the District Land Use Guidelines or the Strategic

1 Land Use Plans, provided that those terms and  
2 conditions are relevant to the activities contemplated  
3 by the undertaking.

4 And I take -- and I think that's quite  
5 consistent with what Mr. Monzon referred to today, he  
6 adopted in his testimony, said it was current, and a  
7 statement that was made to Mr. Fahlgren by a previous  
8 Minister of Natural Resources, and I wrote it down this  
9 way:

10 "That the land use plans should be viewed  
11 as guidelines which have no direct legal  
12 effect on committing the resources of the  
13 province to specific end-uses or in  
14 delineating where various resource  
15 development or conservation activities  
16 can or cannot be carried out."

17 I think that's entirely consistent with  
18 the position that we have taken on the effect of those  
19 guidelines and plans.

20 And, finally, just with respect to the  
21 submissions that have been made on the scope of the  
22 enquiry, so that everyone knows what our position is.  
23 Basically I don't see any significant disagreement  
24 between anybody who has made submissions to you on this  
25 topic in terms of the evidence that is appropriate to

1 bring in front of this Board.

2 It sounds to me like there is remarkable  
3 unanimity on the matter except on the point of what is  
4 forest management versus what is timber management.

5 In my submission, the important question  
6 for the Board is not that one, but what evidence can  
7 properly come before it.

8 I think there is, in principle,  
9 remarkable unanimity on that question and that, in the  
10 course of this hearing, we will no doubt have to deal  
11 with specific difficulties as to when there might be  
12 some argument or some difference in judgment as to when  
13 the limits of that are being reached.

14 But for heaven's sakes, let's deal with  
15 it in the specific as opposed to trying now to set out  
16 some general rule which we say will be applied  
17 lock-step to each and every specific that arise. These  
18 questions can only be decided in the specific and that  
19 will be the time to settle them.

20 It sounds to me, though, as if there  
21 ought not to be very many of them arise if people  
22 actually mean what they have said in their submissions.

23 Thank you, Mr. Chairman.

24 THE CHAIRMAN: Thank you, Mr. Campbell.

25 Well, very well, ladies and gentlemen. I

1 think at this stage we will return to the  
2 cross-examination and the Board will certainly consider  
3 what has been said today on these issues and after you,  
4 Mr. Castrilli and Mr. Edwards, have received  
5 instructions from your client, if you want to address  
6 these issues as well, I would suggest at some  
7 convenient point next week, if you could get those  
8 instructions just to get it out of the road once and  
9 for all, we will deal with it at that time.

10 Mr. Hunter, do you want to -- well,  
11 perhaps we will take a short break, if you don't mind,  
12 and then you can go at it and we will try and make sure  
13 that you get completed today, if possible.

14 MR. HUNTER: Thank you, Mr. Chairman.

15 THE CHAIRMAN: We will break for fifteen  
16 minutes.

17 ---Recess taken at 3:27 p.m.

18 ---Upon resuming at 3:52 p.m.

19 THE CHAIRMAN: Thank you, ladies and  
20 gentlemen.

21 Mr. Hunter?

22 MR. HUNTER: Thank you, Mr. Chairman.

23 Mr. Chairman, before I begin perhaps I  
24 would ask MNR - or I am certainly prepared to file the  
25 December, '85 Draft Assessment that Mr. Freidin has



1       been kind enough to provide us with copies.

2                   THE CHAIRMAN: Very well. We will admit  
3       the Class Environmental Assessment for Timber  
4       Management on Crown Lands of Ontario dated December,  
5       1985 as Exhibit No. 26 (sic).

6       ---EXHIBIT NO. 25: Class Environmental Assessment for  
7                   Timber Management on Crown Lands of  
8                   Ontario dated December, 1985.

9                   MR. HUNTER: Mr. Chairman, the first part  
10      of my cross-examination will deal with the matter that  
11      I had just previously discussed, and hopefully we can  
12      go through it rather quickly.

13                  I will be entering, as an exhibit, this  
14      map which is entitled Nishnawbe-Aski Area, Forest  
15      Management Units, 1987.

16                  We only have one copy, Mr. Chairman. Ms.  
17      Pawlowski is going to be very angry with me because I  
18      know that the Board has to keep this, so we will try to  
19      get another one. But if I could hold it for the  
20      moment, because I will be referring to it.

21                  THE CHAIRMAN: I am sorry, Mr. Hunter, I  
22      misinformed everyone when we made the last Exhibit  
23      number 26, it should be Exhibit No. 25.

24                  MR. HUNTER: This ought to be 25?  
25      (indicating)

1 MRS. KOVEN: That's 26.

2 THE CHAIRMAN: The Class EA I think is  
3 Exhibit 25, and that will be marked as Exhibit 26.

4 What is the title of that map, Mr. Hunter?

5 MR. HUNTER: Nishnawbe-Aski Area, Forest  
6 Management Units, 1987.

7  
8 ---EXHIBIT NO. 26: Map entitled Nishnawbe-Aski Area,  
Forest Management Units, 1987.

9 MR. HUNTER: I believe Mr. Chairman, I  
10 have been informed that this map was prepared by the  
11 Ministry of Natural Resources and that it was presented  
12 to my clients, and I believe to the federal government,  
13 for the purposes of negotiation on resource management  
14 issues under a process entitled Memorandum of  
15 Understanding.

16 I am not familiar with that process, or  
17 the issues, but I believe that that map was prepared  
18 for the parties in that negotiation by the Ministry of  
19 Natural Resources.

20 THE CHAIRMAN: Very well.

21 MR. HUNTER: Perhaps, Mr. Chairman, if  
22 Mr. Freidin will allow, and it might allow the  
23 cross-examination to go more quickly, I will go to the  
24 map, identify lines, ask Mr. Monzon or Mr. Douglas if  
25 they agree with me, if they don't, fine, and perhaps --

1 THE CHAIRMAN: Very well. You don't have  
2 any objections do you, Mr. Freidin?

3 MR. FREIDIN: No.

4 MR. HUNTER: Perhaps, Mr. Freidin I --  
5 Mr. Monzon or Mr. Douglas, I am not sure who will be  
6 the most appropriate witness so...

7 MR. FREIDIN: Sure.

8 CROSS-EXAMINATION BY MR. HUNTER:

9 Q. Is it correct in the 1985 Draft  
10 Assessment that the northern boundary for the area of  
11 the undertaking was approximately a line down the  
12 Albany River to somewhere near the Geraldton border, up  
13 to the 52nd parallel, west to the Manitoba border; is  
14 that correct, Mr. Douglas?

15 MR. DOUGLAS: A. Essentially, yes.

16 Q. Is it correct that in this area from  
17 the 52nd parallel down to approximately this line, Red  
18 Lake, the Sioux Lookout area, from that line down to  
19 approximately this area, Geraldton, and that line  
20 approximately down to this area (indicating) --

21 THE CHAIRMAN: I am afraid, for the  
22 transcript, 'this area' will not come out.

23 MR. HUNTER: It is easier for me to work  
24 from here.

25 Q. From the 52nd parallel down to

1 approximately the 51st parallel, in the Districts of  
2 Red Lake, Sioux Lookout, Geraldton and Moosonee, that  
3 there were no District Land Use Guidelines at the time  
4 of the 1985 Draft; is that correct?

5 MR. DOUGLAS: A. Yes, that is correct.

6 Q. At the present time, the upper  
7 portion -- the northern portion of the boundary is  
8 established by this red line, and is it not correct  
9 that from the red line south to approximately the 51st  
10 parallel and a little lower, Sioux Lookout, that there  
11 are no District Land Use Guidelines at the present  
12 time; is that correct?

13 MR. MONZON: A. That's correct. There  
14 is no District Guidelines for any portion of the Red  
15 Lake District or the Sioux Lookout District or the  
16 Geraldton Administrative District.

17 Q. And Moosonee as well?

18 A. And Moosonee as well.

19 THE CHAIRMAN: Mr. Monzon, would you mind  
20 speaking into the microphone.

21 MR. MONZON: Sorry. Would you like me to  
22 repeat that for the...

23 THE CHAIRMAN: Did everyone hear that?

24 (No response)

25 Okay. No, it is all right.



1                   MR. HUNTER: Q. In the area between the  
2 1985 northern boundary and the northern boundary of the  
3 1987 undertaking, are there forest management units in  
4 existence now?

5                   MR. DOUGLAS: A. I am not certain  
6 whether they are still legally there or not.

7                   There are processes for establishing and  
8 disestablishing forest management units, and I am not  
9 knowledgeable of the exact processes that are followed  
10 in moving them one way or the other or, in fact, the  
11 exact status of any of those particular units that you  
12 speak of.

13                   Q. So, therefore, this map may be  
14 incorrect in its identification of forest management  
15 units; is that correct, Mr. Douglas?

16                   A. The one in --

17                   Q. Exhibit 26, yes.

18                   A. It may or may not be, I am not  
19 certain at this point in time.

20                   Q. Would you please obtain information  
21 as to whether or not those forest management units are  
22 still in existence--

23                   A. Certainly.

24                   Q. --and provide that information to the  
25 Board. Thank you.

1 I understand that there are three types of  
2 forest management units and, if I may, Mr. Chairman, I  
3 will draw your attention to page 11 of Exhibit 4, the  
4 heading is Management Units and under that heading  
5 three different types of units are identified: Crown  
6 Management Units, Company Management Units, and Forest  
7 Management Agreement (Forests).

8 Am I incorrect, Mr. Douglas, that these  
9 are Crown units?

10 A. I am not certain which of the three  
11 categories those fall into, but we can provide that  
12 information at the time we provide the other for you.

13 Q. So you will identify whether these  
14 are either Crown management, company management or  
15 forest management; is that correct?

16 A. Yes.

17 Q. Thank you. But I am correct in  
18 assuming that at least there were management units in  
19 this area; is that correct?

20 MR. MONZON: A. Yes, that's correct.

21 Q. Am I right in assuming that they are  
22 Crown management units or were Crown management units?

23 A. I don't know, we would have to  
24 provide that as part of the...

25 MR. FREIDIN: I can just advise; the

1 information, if you want it right now, is in the  
2 Appendix to the 1985 -- I am sorry, Mr. Chairman, let's  
3 leave it as an undertaking.

4 MR. HUNTER: Q. You are familiar with  
5 the exemption order MNR-11/9, I believe it is at  
6 Exhibit 6A?

7 MR. MONZON: A. Yes, we are.

8 Q. I draw your attention to the second  
9 paragraph where it is stated:

10 "Forest management by the Ministry of  
11 Natural Resources on Crown land presently  
12 included within forest management  
13 units..."

14 MR. MARTEL: What page are we on?

15 MR. HUNTER: I apologize, page 18.

16 MR. MARTEL: Thank you.

17 MR. HUNTER: Q. At the time of the 1985  
18 Draft, is it reasonable to presume that those  
19 management units were included in the area of the  
20 undertaking because of the requirements of the  
21 exemption order?

22 MR. MONZON: A. I think that is  
23 reasonable. I would have -- I think we would probably  
24 have to go back to see if we can look at the rationale  
25 that led to it, but I would tend to agree with that

1 perception.

2 Q. Thank you. At the present time, with  
3 the northern line being south of the 52nd parallel,  
4 those FMUs are excluded from the geographical area of  
5 the undertaking; is that correct?

6 A. If, in fact, those FMUs are still in  
7 existence, they would be excluded from the geographical  
8 area of the undertaking, yes, that is correct.

9 Q. Would you feel that the exemption  
10 order has been fulfilled if, in fact, it was a  
11 requirement to include those FMUs in the undertaking?

12 THE CHAIRMAN: What is the effect, Mr.  
13 Hunter, if in fact those FMUs are not covered by  
14 exemption order, does that mean basically no activity  
15 can be carried on at this time because it would not  
16 have received an EA approval; is that it, essentially?

17 MR. HUNTER: That is one option, yes.  
18 That's correct, Mr. Chairman.

19 The other way of looking at it is the  
20 flip side, that if this exemption order has not been  
21 legally complied with, then I believe, sir, that that  
22 opens up the whole question of applying the Act to  
23 every forest management unit in that area of the  
24 province.

25 THE CHAIRMAN: Do you mean to say -- are



1       you advancing an argument of non-severability, in  
2       effect, of saying that the condition of the exemption  
3       order has been reached, that the exemption order into  
4       totality is gone?

5                       MR. HUNTER: It fails, that's correct,  
6       sir.

7                       MR. MONZON: Mr. Chairman, I think it  
8       would be our position that the conditions of Exemption  
9       Order 11/9 do not make a requirement that the area of  
10      the undertaking should include all forest management  
11      units within the province.

12                      The paragraph on page 18, references  
13      forest management units and I suppose it is subject to  
14      interpretation as to whether or not those words are  
15      taken within the context of meaning all or meaning a  
16      portion.

17                      I think I should advise the Board that  
18      certainly it was not the intent of the Ministry in  
19      describing the area of the undertaking to do so in such  
20      a way so as to cause a perception that the Ministry  
21      was, in some way, attempting to skirt around the edges  
22      of some phraseology.

23                      The management units north of the - and I  
24      am not an expert - but, the management units, to my  
25      understanding, that would be between the red line - the

1 June, '87 - and the line of 1985, would have been  
2 inactive; there would have been no timber management  
3 activity on them, and there was not seen to be any  
4 reason to include them as part of the undertaking at  
5 this point in time.

6 Together with that fact is the fact that  
7 one of the things that we were concerned about with  
8 respect to northern Ontario was the available supply of  
9 timber for the native people in the various native  
10 communities, and we wanted to ensure that there was not  
11 an onerous process that we, or the native people, would  
12 have to go through in making that timber available.

13 So I guess, in summary, I would indicate  
14 that what we are trying to do was expedite a process in  
15 that situation as opposed to trying to do anything  
16 relative to the area of the undertaking that could be  
17 seen as untoward in terms of taking away from our  
18 responsibilities and our intent under this  
19 environmental assessment.

20 MR. HUNTER: Q. Well, I really don't  
21 want to get into a lengthy discussion, Mr. Douglas.

22 I think it is fair to say that those  
23 areas were included in the original undertaking,  
24 presumably because there were FMAs there -- FMUs there;  
25 is that correct?

1 MR. MONZON: A. I would agree with your  
2 presumption, yes.

3 Q. And they may still be there?

4 A. And we will determine that and get  
5 back to you, yes.

6 Q. And if they are still there as FMUs,  
7 then it is open to interpretation as to whether a  
8 requirement of the exemption order has been met; is  
9 that correct, sir?

10 A. That, I believe, is your  
11 interpretation, yes.

12 Q. The phrase 'inactive', is that a  
13 legally defined concept? In other words, is there a  
14 regulatory body of regulation somewhere that says  
15 because it is inactive that, therefore, it is no longer  
16 a forest management unit?

17 A. No, that is not my understanding. It  
18 is not a legal term in that definition, or in that  
19 sense, I am sorry.

20 It just means that -- my understanding of  
21 the term is that there are no timber operations taking  
22 place on those units.

23 Q. And you stated that one of the  
24 reasons why those FMUs or that area is not in the  
25 present undertaking is because of a benefit to native

1 people; is that correct, in terms of access to timber?

2 A. We wanted to make it easier.

3 Q. When was the decision made to move  
4 that line south and who made that decision?

5 MR. DOUGLAS: A. I believe it was a  
6 decision made by the Ministry in the revision of the  
7 document and I believe, in part, it was made on the  
8 basis of the requests that we were getting from the  
9 native people and what we were seeking to do, because  
10 the requests were for small amounts of timber in  
11 isolated situations - essentially for community  
12 purposes - that if that line was changed and an  
13 exemption order was put in place, we could quickly and  
14 efficiently deal with those requests for making timber  
15 available for native people in a very short period of  
16 time. And, essentially, that was probably the major  
17 reason behind the change in the line.

18 And we -- personally, I read that  
19 exemption order to state that it there is a forest  
20 management unit in place, well, that in fact is part of  
21 the definition of the undertaking.

22 So that the purpose in this amendment  
23 that you refer to was predominantly to quickly,  
24 efficiently and effectively make timber available for  
25 90 per cent of the cases, or 95 per cent of the cases,



1 the native people. And, in fact, what we did before we  
2 proceeded, was to get some kind of idea from our  
3 regional people how many requests were made.

4 And we have, in effect, begun discussions  
5 with the Ministry of Environment about what would be  
6 the proper terms of such an exemption order.

7 That is not complete, those discussions  
8 are under way, but request has been made to enter into  
9 those discussions. There are a number of conditions on  
10 there which would protect the environment --

11 Q. Conditions on where?

12 A. In our proposed exemption order to  
13 make these amounts of timber available for the native  
14 people; we have got some conditions in our proposal,  
15 for example, on access roads, so that we can protect  
16 the environment.

17 So it is not a blanket exemption order,  
18 there are conditions on our request, but we are still  
19 negotiating that with the Ministry of Environment and  
20 we are having discussions with the Ontario Northern  
21 Native Affairs Directorate on that matter and that is  
22 a recent happening, but it is under way.

23 Q. How recent, Mr. Douglas?

24 A. Well, we have had informal  
25 discussions over the last -- Oh, I guess five or six

1 months. The request was sent from our Deputy Minister  
2 probably a month ago.

3 Don't tie me to that exact date, but it  
4 is in that time frame.

5 Q. No, but when was the decision made to  
6 move the line?

7 A. When the change was made, the  
8 amendment was made.

9 Q. Which was June of 1987?

10 A. That's correct.

11 Q. So approximately a year ago?

12 A. Mm-hmm.

13 Q. You made that decision.

14 MR. HUNTER: Excuse me one moment, Mr.  
15 Chairman.

16 THE CHAIRMAN: So am I to understand from  
17 what you are saying, Mr. Douglas, is that the Ministry,  
18 in order to make this timber available quickly for  
19 native peoples for community purposes, decided to take  
20 whatever units there were that might have been covered  
21 by this exemption out of it by moving the line south  
22 and entertaining the possibility of entering a new  
23 exemption and of entering into discussions with respect  
24 to a new exemption order with regards to those units  
25 north of the line, or with regard to the area north of

1 the line?

2 MR. DOUGLAS: Yes. Mr. Monzon referred  
3 to those as inactive units in the sense that there  
4 wasn't anything going on and we were getting requests  
5 for very isolated pockets of timber that were important  
6 to native people in particular.

7 To prepare a timber management plan  
8 according to all of the requirements that we are  
9 proposing that take place in active units, didn't seem  
10 to make a lot of sense.

11 It would take a year; it would require us  
12 to do analysis for many parts of the area that would  
13 not be affected whatsoever. So it seemed to make most  
14 sense to deal with those, essentially on, a  
15 case-by-case basis.

16 Now, there are problems in trying to  
17 develop that because you have criteria that defines  
18 community needs, defines small scale and that has in  
19 fact been one of our problems in order to come up with  
20 some acceptable definition of what those terms mean.  
21 And that has been the reason why we have had trouble  
22 putting a request together, because it is very hard to  
23 write it in such a way that it is intended without it  
24 possibly having many interpretations on it, so it has  
25 been a practical problem of writing the words to meet

1       that intent.

2                   MR. HUNTER:  Q.  Mr. Douglas, would you  
3 understand my surprise when, in reviewing this issue, I  
4 have found no request on file from NAN to have those  
5 areas removed and, according to my information at this  
6 time, no one in NAN familiar with this issue is aware  
7 of the position which you have just stated?

8                   MR. DOUGLAS:  A.  Well, my information  
9 comes from our regional directors who have said that  
10 they have numerous requests in the district offices in  
11 that part of the province.

12                   I must agree with you, I have never seen  
13 a formal request from NAN either.

14                   Q.  Or from any community in NAN?

15                   A.  I cannot answer that.  It is based on  
16 information I have received from our regional  
17 directors.

18                   Q.  So I want to be very clear.  Your  
19 opinion is based upon information given to you by  
20 regional directors; is that correct?

21                   A.  That's correct.

22                   Q.  I draw your attention in the  
23 Document, Exhibit 4, to the page 11.  Again, the top of  
24 page 11 there is three lines, lines 1 to 3.  It says:

25                   "In the future the undertaking may also



1 occur on any other Crown lands in Ontario  
2 which may be added to the area of  
3 designated forest management units  
4 depicted on 3.2/1."

5 Am I correct in assuming that it is MNR's  
6 intent to apply this assessment or the decision of this  
7 Board to those FMUs?

8 MR. DOUGLAS: A. Well, we would meet the  
9 requirements laid down by the Board.

10 If you are asking me what our intent is,  
11 it would be that if the nature of the timber operations  
12 in areas north of the line justified the application of  
13 the full process that we are seeking approval for, they  
14 would become management units and they would be subject  
15 to the full force of the environmental assessment as we  
16 are proposing.

17 Q. So, in other words, if they are FMUs  
18 it is your understanding that at some point in time the  
19 assessment document, as determined by this Board, would  
20 apply to those FMUs; is that correct? 'Yes' or 'no'?

21 A. What I am saying is that under our  
22 intent, is that those not be management units at the  
23 day of this -- of the approval of this class  
24 environmental assessment, whether they are today or  
25 not, we will clarify.

1                   Let's assume they are not, okay. We  
2                   would have in place a process in which we could deal  
3                   with small requests for operations for community needs,  
4                   local needs, small scale.

5                   If, over time, those requests build up to  
6                   occurring on a substantial proportion of any given  
7                   area, then we would have to identify that as a  
8                   management unit, we would make it a management unit,  
9                   either by establishing a new management unit or  
10                  amending one of the boundaries that we have now and our  
11                  understanding would be at that point in time the full  
12                  requirements of this document would come into effect.

13                  THE CHAIRMAN: But they would not have  
14                  taken part in the process leading up to whatever this  
15                  Board decides on the management units that are now  
16                  included.

17                  Do you not see that as a problem?

18                  MR. DOUGLAS: Pardon?

19                  THE CHAIRMAN: I am suggesting that the  
20                  people outside of the area of the undertaking right now  
21                  may not have taken part in the process leading up to  
22                  the approval of what is withinside the area of the  
23                  undertaking now.

24                  Therefore, their input on conditions  
25                  which should or should not be applied, should approval

1 be granted, would not be taken into account,  
2 notwithstanding that you are indicating that if the  
3 undertaking were approved, and those areas became  
4 active north of the line that the same conditions  
5 should apply as to ones south of the line.

6 MR. DOUGLAS: Mm-hmm.

7 THE CHAIRMAN: And I am suggesting to you  
8 that there is a difference in terms of the  
9 participation of parties outside the area leading up to  
10 the Board's approval, if it approves and/or conditions  
11 upon.

12 MR. DOUGLAS: That is certainly a  
13 consideration, yes, sir.

14 THE CHAIRMAN: Well, I would suggest that  
15 it would be a substantial consideration.

16 MR. DOUGLAS: I am just trying to outline  
17 for the Board the intent behind these changes which  
18 have been identified.

19 MR. HUNTER: Q. So, in other words, you  
20 wouldn't anticipate that there would be another class  
21 assessment or environmental assessment before this  
22 Board with respect to timbering practices in that area;  
23 is that correct?

24 A. Could you define 'that area', please?

25 Q. The area between the 52nd parallel,

1 the Albany River being the northern boundary under the  
2 '85 Draft, and the northern boundary under the '87  
3 Draft?

4 A. That is not our proposal at this  
5 time, no.

6 Q. What would you propose, in terms of  
7 meeting reasonable expectations of public participation  
8 and involvement of northern communities in that area?

9 A. In what particular way, in terms of  
10 the development?

11 Q. Decision making, development of the  
12 plan.

13 A. Well, they would have full  
14 opportunities according to the requirements that we are  
15 proposing to the Board.

16 THE CHAIRMAN: No, but what about full  
17 opportunities under the Act of having anything to do  
18 with areas that are not subject to this particular  
19 undertaking and subject to the EA process with a  
20 hearing attached.

21 You are suggesting that they would not  
22 have to bother with a hearing process; are you not?

23 MR. DOUGLAS: We will be suggesting the  
24 amendment process as we see it. Of course, it is for  
25 the Board to make a ruling on it, and perhaps I am



1 getting a little further into what will be given later  
2 than I should.

3 THE CHAIRMAN: Well, Mr. Hunter, I will  
4 let you carry on with your cross-examination.

5 MR. HUNTER: Thank you, Mr. Chairman.

6 Q. Mr. Douglas, with respect to the FMUs  
7 in existence between the 52nd parallel, the Albany  
8 River being the northern boundary of the '85 Draft, and  
9 the area within the present line, are there any  
10 applications, has there been any expression of interest  
11 by any timber company to expand their cutting  
12 operations into those areas; yes or no?

13 A. I don't have any knowledge of that.

14 Q. Or, I don't know?

15 A. Those would go into regional office.

16 Q. So, in other words, if company "x",  
17 for example in the Geraldton area just south of Fort  
18 Hope, which is a large community, wanted to expand and  
19 establish a company unit or an FMA, you would not know?

20 A. I personally wouldn't know.

21 MR. FREIDIN: Wanted to establish an FMU  
22 or an FM...?

23 MR. HUNTER: Q. FMA, or whatever unit,  
24 for the purposes of their own cutting; they wanted a  
25 company unit, they wanted an FMA, I think it is a very

1       straightforward question. Who would know?

2                   MR. MONZON: A. The regional directors  
3       in the various regions would either be aware of the  
4       proposal or the Timber Sales Branch of the Ministry of  
5       Natural Resources would be aware of the proposal.

6                   Q. And, as I understand your evidence,  
7       Mr. Douglas, native interests would take a priority in  
8       those areas over an interest by a timber management  
9       company, or a timber cutting company; is that correct?

10                  MR. DOUGLAS: A. I didn't say they would  
11       take a priority or words to that effect. I said that  
12       the reason why the proposed exemption order has been  
13       prepared is that, my understanding from our regional  
14       people, is that the majority of the requests have come  
15       from native people and that, in fact, understandable  
16       because they are the bulk of the population in that  
17       area.

18                  Q. Let me go back. You are preparing an  
19       exemption order which will apply to those FMUs now; is  
20       that correct?

21                  A. I am not talking -- no, we are  
22       working on the basis that those FMUs were no longer in  
23       existence, or we are talking about areas north of the  
24       '87 boundary.

25                  Q. And there will be an exemption order

1 applying to those lands; is that correct?

2 A. I am saying we are making - we are  
3 making that request. Whether we are granted that, I  
4 cannot say.

5 MR. HUNTER: Thank you. Sorry, Mr.  
6 Martel.

7 MR. MARTIN: I think you said most of the  
8 requests. Are there other requests, Mr. Douglas?

9 MR. DOUGLAS: I believe there are some,  
10 but I don't have the list in front of me and I wouldn't  
11 have that specific knowledge myself.

12 MR. HUNTER: Q. Would that go all the  
13 way north up to James Bay and Hudson Bay, that  
14 exemption order?

15 MR. DOUGLAS: A. Well, I don't believe  
16 there is any northern limit on it, except for  
17 practicality purposes, if you run out of a commercially  
18 tract of trees once you get to a certain extent north.

19 MR. MONZON: A. I think it would run --  
20 my sense is it would probably run to the coast.

21 I mean, there are --

22 Q. To the coast?

23 A. There are northern communities along  
24 the northern coast. The intent would be to provide  
25 them easy access to timber for personal use or

1       whatever.

2                   Q.   So, to your knowledge, there has been  
3       no expression of interest, other than by the native  
4       communities, with respect to cutting north of the red  
5       line; is that correct?

6                   MR. DOUGLAS:   A.   I'm not certain of  
7       that.   I don't want to mislead the Board.   I don't have  
8       that information in front of me and I would be giving  
9       that information secondhand, so I don't have that  
10      personal knowledge.

11                   But my understanding is, our people have  
12      been faced with the situation in which there has been a  
13      request for a very small pocket of wood to serve a  
14      local community and the situation we are in, that we  
15      couldn't respond and there was no reason -- no good  
16      reason why that wood should not be made available to  
17      that community.

18                   So we were looking for mechanisms to deal  
19      with that situation.

20                   Q.   Thank you.

21                   MR. HUNTER:   Mr. Chairman, I would like  
22      to turn now to the Wawa District.   I presume Mr. Monzon  
23      would be the best person to speak about that.

24                   Q.   Mr. Monzon, am I correct that the  
25      scale of that map is 1 to 250,000; is that correct,



1 behind you?

2 MR. MONZON: A. In all seriousness I  
3 believe that is the scale we agreed upon the other day.

4 THE CHAIRMAN: And that is Exhibit 11 you  
5 are referring to?

6 MR. MONZON: Yes.

7 MR. HUNTER: Q. No, 13 the Wawa  
8 District.

9 If one were involved in a regional or  
10 county land use planning exercise, are you familiar  
11 with the scale that they would be using in terms of  
12 their mapping?

13 Would you accept, subject to check, 1 to  
14 25,000?

15 A. I would accept that, sure.

16 Q. If one were involved in a secondary  
17 plan, 1 to 10,000. Would you accept that subject to  
18 check?

19 A. Yes.

20 MR. HUNTER: Mr. Chairman, I would ask  
21 you to -- I am going to go now to the witness  
22 statement, which I believe is Exhibit 6, and I am going  
23 to try to control the paper.

24 THE CHAIRMAN: I hope you are more  
25 successful than we are.

1 MR. HUNTER: Well, I was just  
2 substantially impressed by Mr. Castrilli's paper  
3 management, so I hope I can do as well as he did.

4 Q. Page 129, Mr. Monzon, on the -- yes,  
5 129 on the righthand side in the third paragraph down  
6 it says:

7 "Land uses on private land generally  
8 will not be objected to unless they  
9 are...

10 The ministry recognizes that its land use  
11 guidelines have no legal status and it  
12 seems conjunctive that control of private  
13 land use rests with..."

14 I presume that is the Ministry of Housing  
15 or something like that?

16 MR. MONZON: A. Yes, Ministry of  
17 Municipal Affairs and Housing.

18 Q. I am sure this question has been  
19 asked before, I know that Mr. Freidin responded.

20 Is it your view that District Land Use  
21 Guidelines have a legal effect with respect to Crown  
22 lands?

23 A. They have no legal status with  
24 respect to activities on Crown lands.

25 Q. Thank you.

1 THE CHAIRMAN: Sorry, I missed the last  
2 part... Except for activities on Crown land, or no  
3 legal status, period?

4 MR. MONZON: I believe counsel was asking  
5 me if they had legal status with respect to Crown land,  
6 and I was confirming that they did not.

7 THE CHAIRMAN: Oh.

8 MR. HUNTER: Q. This guideline, is this  
9 important, in your view, with respect to decision  
10 making in the Wawa District in the allocation of  
11 resources by the Ministry?

12 MR. MONZON: A. Provides direction.

13 Q. Provides direction.

14 A. Direction and guidelines for the  
15 managers and for the people in the area.

16 Q. How is it of practical benefit?

17 A. I believe, as I indicated in  
18 evidence, people and managers with this document are  
19 able to look at specific areas on the map as identified  
20 in the land use areas and have a sense of the  
21 activities that can be expected to occur on those  
22 particular areas.

23 Q. Meaning permitted uses?

24 A. Yes.

25 Q. If I may draw your attention to page

1 133.

2 MR. HUNTER: Mr. Chairman, what I propose  
3 to do now is work my way through a series of land use  
4 areas and the permitted uses in those areas.

5 Q. Mr. Monzon, if we look at the  
6 integrated multiple-resource management group, under  
7 Area Description, this constitutes 67 per cent of the  
8 district; is that correct?

9 MR. MONZON: A. That's correct.

10 Q. And forestry is a permitted use on  
11 page 134?

12 A. That's correct.

13 Q. And the guideline for that activity  
14 is identified on the right-hand side; is that correct?

15 A. Yes, the guideline with respect to  
16 this document is, yes.

17 Q. We then go to Wildlife Preserve, 136,  
18 which constitutes 11 per cent.

19 A. Yes.

20 Q. Forestry is a permitted use, and in  
21 the guideline at 137, am I correct in saying that the  
22 guideline is identical to that found in the integrated  
23 multiple-resource section, except for the fact that  
24 before the word "roads", which is in the third line,  
25 second word from the end, that the word "access" is not



1       there, whereas in the guideline in integrated  
2       multiple-resource the word "access" is there?

3                   A.   Yes, that's correct.

4                   Q.   Was that intended, sir; that is, that  
5       omission? Is there any significance to that omission?

6                   A.   I really don't know.

7                   Q.   Thank you. If we now proceed to  
8       Crown Land Recreation Access, we have 7 per cent; is  
9       that correct, of the land use area -- of the land area  
10      in Wawa?

11                  A.   I am sorry, could you refer...

12                  Q.   Page 150.

13                  A.   150?

14                  Q.   Yes.

15                  A.   Yes.

16                  Q.   Forestry is a permitted use; is that  
17      correct?

18                  A.   Yes, that's correct.

19                  Q.   And there is no guideline?

20                  A.   That's correct.

21                  Q.   If we now proceed to Remote Access we  
22      have 3 per cent -- I apologize, page 154.

23                  A.   Yes, that's correct.

24                  Q.   Forestry is a permitted use?

25                  A.   Yes.

- 1 Q. The guidelines says:  
2 "Although permitted, no commercial  
3 operations are anticipated."  
4 Is that correct?  
5 A. Yes, that's correct.  
6 Q. Lake Superior Coastline on page 156,  
7 forestry is a permitted use?  
8 A. That's correct.  
9 Q. "Operational guidelines will contain  
10 specific guidelines for the protection of  
11 aesthetic values and fish and wildlife  
12 habitat."  
13 Is that correct, sir?  
14 A. That's correct.  
15 Q. Now, if I add those numbers up:  
16 integrated management, 67 per cent; wildlife preserve,  
17 11 per cent; Crown land, 7 per cent; remote access, 3  
18 per cent, I come up with 88 per cent.  
19 A. I will accept your math.  
20 Q. Thank you. Therefore, forestry is  
21 permitted in 88 per cent of the land use in the Wawa  
22 district as a permitted use?  
23 A. Yes, that would be the ...  
24 Q. Thank you. Federal lands, Pukaskwa  
25 Park 7.9 per cent, if you will accept this, Mr. Monzon;

1 provincial parks constitute 8 per cent; and Indian  
2 reserve .1 per cent.

3 When I add those all up it comes to 16  
4 per cent. I think if I add 88 and 16 I get 104. I  
5 think there is a little bit of a problem with the  
6 numbers.

7 A. It certainly would appear that way.

8 Q. Is it not fair to say that timbering  
9 is a permitted use in all Crown land in Wawa District;  
10 is that correct?

11 A. If timbering is a permitted use?

12 Q. Forestry, yes.

13 A. Over the -- certainly the majority of  
14 the area and the numbers that you have put forward  
15 substantiate that.

16 There are specific areas within Lake  
17 Superior Park where you would have to go to more  
18 detailed plans where forestry activity is not  
19 permitted.

20 Certainly on the private land, it will  
21 be --

22 Q. Not yet anyway.

23 A. I am just going to make the point  
24 that it is other owners.

25 Q. Excuse me?

1 A. It would be other owners.

2 The final point I would make is that with  
3 all of that there are guidelines that are indicated in  
4 this document, and in the development of forest  
5 management plans for management units within the  
6 district, there would be the necessity, as we have  
7 indicated in earlier evidence, to take into account the  
8 values to be protected in all of those land use areas.

9 Q. I don't know whether you will accept  
10 this, I hope you will, otherwise we will have to go  
11 through it, but would you agree with my observation  
12 that mining is a permitted use in all Crown land areas?

13 A. I would accept your analysis that you  
14 have done.

15 Q. Roads are a permitted use?

16 A. Yes.

17 Q. Tourism is a permitted use?

18 A. Yes.

19 Q. Sports fishing is a permitted use?

20 A. Yes.

21 Q. Wild ricing is not a permitted use in  
22 any area?

23 A. I believe that's true. I think  
24 that's largely because of the habitat and information  
25 that was known about habitat at that time that the



1 document was put together.

2 Q. If I were to say to you that there is  
3 a substantial potential for wild ricing in the  
4 Michipicoten area around the Grow Cap Reserve, would  
5 you be surprised?

6 A. Yes, I suppose so. It was not one of  
7 the areas that I was aware of, but I will accept your  
8 statement.

9 Q. Thank you. Just if I may go to the  
10 map, Mr. Chairman. I take a personal interest in this  
11 particular area since I have been there.

12 This is this kilometre-wide land that I  
13 referred to, the Lake Superior Coastline in which, I  
14 understand, forestry is a permitted use.

15 This line runs, if I am correct, between  
16 Pukaskwa and the Lake Superior Park; is that correct,  
17 Mr. Monzon?

18 A. I believe so. I believe it is broken  
19 by some private land and some Indian reserves, but that  
20 is essentially correct.

21 Q. The intent is to have a coastal  
22 hiking trail; is that correct?

23 A. If that's what the document says.

24 Q. I am very curious as to why you  
25 simply didn't say in this area, for example, that

1 forestry was not a permitted use?

2 A. My presumption would be that given  
3 that the size of the area is a kilometre in width, that  
4 there may be situations that are taking -- that there  
5 may be situations arise in Area 14 and Area 1 -- Areas  
6 14 and 1 where forestry operations are going on.

7 And if there is -- those operations are  
8 going on in the vicinity of this coastal area, given  
9 the nature of the topography and the nature of the  
10 resources, it may be quite appropriate to extend the  
11 forestry operations to some point into that coastal  
12 area instead of cutting it off at a one-kilometre  
13 boundary.

14 THE CHAIRMAN: But it also does not  
15 prevent them from conducting those operations right up  
16 to the shoreline, if it is a permitted use?

17 MR. MONZON: If it is a permitted use.  
18 But the timber management plan that would be conducted  
19 for the management unit for that area would have to  
20 recognize that you have that particular area, that you  
21 have the coastal hiking, and you would have to ensure  
22 that there was appropriate protection for those other  
23 values.

24 MR. HUNTER: Q. If I may, Mr. Monzon, I  
25 would direct your attention to page 130 of Exhibit 6.

1 I draw your attention to the last  
2 paragraph:

3 "While Indian reserve lands are not under  
4 provincial control, the Ministry of  
5 Natural Resources anticipates..."

6 anticipates:

7 "...that future development on Indian  
8 reserves will be compatible with the land  
9 use intent established for the areas  
10 adjacent to the reserves."

11 You have to forgive me, I am a lawyer and  
12 words interest me. "Anticipates", do you have an  
13 understanding or an agreement with the federal  
14 government that land use activities on that reserve  
15 will be -- reserves will be compatible with land use  
16 intents in the areas adjacent to the reserves?

17 A. No, there is no agreement like that  
18 at all.

19 Q. What does anticipate mean?  
20 What's the context of that?

21 A. The context of that was, looking at  
22 the terms of the resources that were available in that  
23 area, and looking at the Indian communities and the  
24 reserve communities, it did not seem to the planners  
25 and the managers that were working on the development

1 of this document that there would be any type of  
2 resource development or any type of development  
3 activity on those reserves that would be incompatible  
4 with the land use activity taking place outside the  
5 reserve.

6 It was not an attempt to direct any  
7 particular type of activity. It was, if you want, a  
8 best guess that any activity that did take place would  
9 not be in conflict with the development that was taking  
10 place outside the reserve.

11 Q. Let's look at the word "reserves".  
12 Am I wrong, I believe that there is only one reserve in  
13 Wawa and that's Grow Cap; is that correct, or am I  
14 wrong?

15 A. Well, there is only one reserve in  
16 Wawa. You have the - if I am not mistaken, you have  
17 the -- there is a reserve in the White River area, the  
18 name escapes me at the moment.

19 Q. If we assume for the moment that  
20 there is no other reserve in the Wawa District, do I  
21 just take that to mean that it is a mistake rather than  
22 a statement of policy?

23 A. You mean that the word 'land' is...

24 Q. No, the word 'reserve'. I read that  
25 to mean --



1 A. Plural as opposed to singular?

2 Q. Yes. Can I take comfort that that  
3 paragraph does not mean that it is the policy of MNR to  
4 anticipate that future development on Indian reserves  
5 will be compatible with land use intent established for  
6 areas adjacent to reserves?

7 A. Yes, you can take comfort that is not  
8 the policy.

9 Q. So this only applies to the Wawa  
10 District and to Grow Cap; is that correct?

11 A. Well, this particular statement in  
12 this document applies to the Wawa District. There may  
13 be similar statements in other districts that apply to  
14 other reserves.

15 Q. You have anticipated my question.  
16 Does that statement, or statements similar to that  
17 statement, exist in other District Land Use Guidelines,  
18 or do I have to go and read all of these blessed  
19 things?

20 A. I anticipate that that statement does  
21 apply. Just give me a minute. I happen to have Kenora  
22 here for some reason.

23 There is a similar statement in the  
24 Kenora document. It is not exactly the same, I don't  
25 believe, but it is...

1 Q. So we would not be surprised if we  
2 were to find similar statements in many, perhaps not  
3 all, but many District Land Use Guidelines?

4 A. Correct.

5 Q. You agree with me, sir?

6 A. Yes.

7 Q. So, therefore, this is not just an  
8 issue of individual concern; is that a fair  
9 observation, it seems to me that there is a policy  
10 intent which stretches across the land?

11 A. The only policy intent that was  
12 current, that we were dealing with at the time relative  
13 to this, was to deal with the issue of Crown land and  
14 private land. We had dealt in this section with how we  
15 were dealing with Crown land.

16 We also - to go back to Wawa for the  
17 moment - page 129, on the right-hand side, the last  
18 paragraph which is rather lengthy, deals with issues on  
19 private land.

20 For the purposes of our planning  
21 exercise, Indian reserves were considered to be private  
22 land so it was -- or outside the jurisdiction, is a  
23 better terminology of this Ministry and, therefore, it  
24 was thought appropriate to put in a statement which  
25 related to the aspect of use on land -- of land uses on

1       those reserves. I would retract the statement of  
2       private land.

3                   THE CHAIRMAN: Mr. Hunter, may --

4                   MR. HUNTER: I am sure the federal  
5       government would have some concerns, but...

6                   THE CHAIRMAN: Maybe I am missing  
7       something, but if the reserves are under federal  
8       government control, even if the Ministry in expressing  
9       these statements in these plans seemed to indicate that  
10      there was a policy behind it, how could they promulgate  
11      that policy on lands on which they do not control?

12                  MR. HUNTER: They could refuse, for  
13      example, Mr. Chairman, to issue a permit where there  
14      was an activity on the reserve which might have an  
15      effect on non-reserve land immediately adjacent to that  
16      area.

17                  That is one clear example of where that  
18      can arise and, therefore --

19                  THE CHAIRMAN: Perhaps if you can just  
20      explain it, because I am personally not familiar with  
21      the types of control that are exercised, but suppose  
22      the federal government decided that that same activity  
23      should in fact occur on the reserve?

24                  MR. HUNTER: The federal government?

25                  THE CHAIRMAN: Yes.

1 MR. HUNTER: Well, for example, trapping.  
2 You have a trap line on an Indian reserve and that trap  
3 line extends over into the Crown land.

4 THE CHAIRMAN: And is it not the federal  
5 government that controls what happens on the reserve?

6 MR. HUNTER: Yes.

7 THE CHAIRMAN: And the provincial  
8 government what happens outside the reserve?

9 MR. HUNTER: No, it is not as clean as  
10 that.

11 THE CHAIRMAN: No.

12 MR. HUNTER: I wish it was, but it is  
13 not. There are instances where the Ministry of Natural  
14 Resources will issue a licence for trapping which could  
15 effectively preclude trapping on the reserve because of  
16 the requirement for stamping of furs.

17 THE CHAIRMAN: Okay. That is the area...

18 MR. HUNTER: I had a long list, but I  
19 think time and modesty prevents me from going through  
20 it.

21 The concern, Mr. Chairman, is simply  
22 that -- well, I will direct this to Mr. Monzon.

23 Q. Do you agree that a paragraph like  
24 that, or paragraphs similar to that, exist in District  
25 Land Use Guidelines?



1 MR. MONZON: A. Yes.

2 Q. And there is an anticipation that  
3 future development on Indian reserves will be  
4 compatible with land use intent established for areas  
5 adjacent to those reserves; is that correct, sir?

6 A. Yes, that's correct.

7 Q. Thank you.

8 MR. HUNTER: Now, I am going to turn, Mr.  
9 Chairman, to Mr. Freidin's favourite subject, District  
10 Land Use Guidelines, and I would ask you now for a  
11 brief period to refer to the Class 1985 Draft  
12 Agreement.

13 MR. FREIDIN: If I tell you that it is  
14 not my favourite subject, will you refrain from asking  
15 questions?

16 MR. HUNTER: I'm afraid not.

17 Mr. Chairman, I draw your attention to  
18 the Draft Document at page 94, in the first full  
19 paragraph, and I would particularly draw your attention  
20 to line 4:

21 "MNR District Land Use Guidelines are a  
22 key information source, particularly in  
23 terms of their contribution to the  
24 establishment of the 20-year projection  
25 of the timber management plan for each

1 management unit in the district.  
2 The timber production targets in the  
3 District Land Use Guidelines and the  
4 identification of land use areas with  
5 their associated land use intents are  
6 fundamental considerations in the  
7 establishment of the 20-year project."

8 I draw your attention to the 1987  
9 Document, first at page 11 - and I will ask your  
10 patience on this because -- well, let's make it  
11 simpler.

12 Page 112, commencing at line 36, at the  
13 bottom, and over to 113, the first full paragraph, we  
14 have reference to the District Land Use Guidelines.

15 In this instance:

16 "The District Land Use Guidelines  
17 themselves are an important source of  
18 background information. In those  
19 documents the area of each district is  
20 subdivided into land use areas."

21 I don't feel I should have to read  
22 anymore of that.

23 I am trying to identify for you one more  
24 reference to District Land Use Guidelines in the 1987  
25 Document and I had thought that it was -- yes, I

1 thought that it was on page 11 at lines 10 to 14, but I  
2 am not correct on that. There is an additional  
3 reference and, if you will just bear with me...

4 I am sorry, I apologize, it is on page 11  
5 under the Summary. If I might impose upon MNR, perhaps  
6 they could run their numbers sequentially through the  
7 whole document.

8 In any case, it is called Part II, The  
9 Timber Management Planning Process, the second full  
10 paragraph.

11 THE CHAIRMAN: This is on page 11 of  
12 Exhibit 4?

13 MR. HUNTER: Yes, sir. There are two  
14 page 11s. I have a difficult time with the concept.

15 MR. FREIDIN: I am advised that he was  
16 referring to the Summary, Mr. Hunter.

17 MR. HUNTER: Yes, the Summary. Have you  
18 found it, sir?

19 THE CHAIRMAN: I think so.

20 MR. HUNTER: The second full paragraph:  
21 "Timber management plans must adhere to  
22 policies established by Cabinet and the  
23 Ministry of Natural Resources and have  
24 regard for MNR's Land Use Guidelines.

25 Within this framework, the determination

1                   of operation within a management unit is  
2                   based primarily on information which  
3                   pertains to that individual unit."

4                   Q. Mr. Monzon, were District Land Use  
5           Guidelines of fundamental importance or to form the  
6           basis of fundamental considerations in the  
7           establishment of 20-year projections as stated in the  
8           1985 Document?

9                   Is that statement correct?

10                  MR. MONZON: A. Well, I think they are  
11           important in the establishment of the projection.

12                  Q. I think, sir, my question was: Were  
13           they of fundamental importance. I am not suggesting  
14           that they are today, I am just asking were they of  
15           fundamental importance.

16                  A. Well, we viewed them then and now as  
17           important documents in the structure of the timber  
18           management plan, which is now done on a five-year  
19           basis, but it was projected over a 20-year period.

20                  Q. So then that statement in the Draft  
21           Document is not correct; is that your response?

22                  You said they are important. I asked you  
23           up, until 1985, were they of fundamental importance,  
24           and I am stressing the word 'fundamental' as distinct  
25           from just 'important'?



1           A. I think regardless as to whether -- I  
2 think I understand your concern. Regardless of whether  
3 the word 'fundamental' appears in the 1987 Document, I  
4 would take the view that they are of fundamental  
5 consideration, yes.

6           Q. They were and are?

7           A. Were and are.

8           Q. Thank you.

9           MR. FREIDIN: Mr. Chairman, the evidence  
10 in relation to changes which affect the timber  
11 management planning process will be discussed again in  
12 later panels and people who were actually involved in  
13 preparing these plans, timber management plans, will be  
14 able to address the significance they impact, if  
15 anything, to the changes in terms of the direction that  
16 they thought they were receiving.

17           THE CHAIRMAN: No, but it is fair for Mr.  
18 Hunter to question Mr. Monzon because he has presented  
19 to the Board, in a summary way, these planning  
20 procedures.

21           MR. FREIDIN: Planning in general, not as  
22 an expert necessarily in timber management planning.

23           THE CHAIRMAN: No, but as somebody who is  
24 aware of how the Ministry views the importance of these  
25 various plans, surely, it is your level, Mr. Monzon--

1 MR. MONZON: Mm-hm.

2 THE CHAIRMAN: --to be able to view what  
3 the Ministry's position is.

4 MR. MONZON: That's correct.

5 MR. HUNTER: Thank you, Mr. Chairman.

6 Q. The 1987 Document, Mr. Monzon:

7 "Timber management plans must adhere to  
8 policies established by Cabinet."

9 Could you please identify for us --

10 MR. MONZON: A. I am sorry?

11 Q. Page 11.

12 A. Oh, page 11.

13 Q. "... policies established by  
14 Cabinet."

15 The first question: What policies?

16 A. Any policy established by...

17 Q. Are there any policies?

18 A. I am sorry?

19 Q. Are there policies?

20 A. Established by Cabinet?

21 Q. Yes, with respect to the  
22 establishment of timber management plans.

23 The paragraph says there are three -- as  
24 I understand it, there are three pieces of paper which  
25 will affect the establishment of timber management

1 plans. The first piece of paper, Cabinet policies?

2 A. Yes.

3 Q. Are there Cabinet policies and, if  
4 so, can you please tell us what those policies are?

5 A. Well, there are a number of Cabinet  
6 policies. The point I was trying to deal with was the  
7 fact that there are Cabinet policies as opposed to  
8 Cabinet policies that deal with timber management  
9 plans. I draw the distinction between the two.

10 Q. Are there Cabinet policies that deal  
11 with timber management plans?

12 THE CHAIRMAN: Could you run that by us  
13 once more, I am not sure I understand.

14 MR. MONZON: The Cabinet sets a number of  
15 policies. They have set the Parks Policy, they have  
16 set the Forest Production Policy, they have set the  
17 Moose Policy. All of those policies are expected -- or  
18 have to be adhered to in the construction of timber  
19 management plans.

20 The point I was trying to distinguish -  
21 and I wasn't sure by the way counsel asked the  
22 question - was whether or not counsel was asking  
23 whether Cabinet had approved a specific policy  
24 regarding the preparation of timber management plans.

25 And I am not aware - and I confess not to

1 be an expert in this area - of a specific policy  
2 relative to timber management plans, the preparation  
3 thereof.

4 MR. HUNTER: Q. In a park policy or any  
5 other policy, would that policy contain specific  
6 directions in relationship to timber management  
7 planning?

8 MR. MONZON: A. It would contain  
9 specific directions and identification of values which  
10 must be adhered to in the preparation of timber  
11 management plans. The policy would not state the  
12 timber management plan must do this or that,  
13 necessarily.

14 Q. So, in other words, as a  
15 hypothetical, there could be a timber management --  
16 Cabinet policy on Fish Management.

17 A. Yes.

18 Q. And that policy could say: Having  
19 regard to timber management plans, you should take the  
20 following into consideration, (a), (b), (c), (d) and  
21 (e); is that correct, sir?

22 A. That's a possibility. That's a  
23 possibility.

24 Q. Can you identify for us any Cabinet  
25 policies which do that?



1                   A. I can't think of any off the top --  
2 right off the top.

3                   THE CHAIRMAN: But is that not being  
4 specific--

5                   MR. MONZON: That is being very specific,  
6 Mr. Chairman.

7                   THE CHAIRMAN: --within a policy  
8 mentioning a relationship, a direct relationship to  
9 timber management plans?

10                  MR. MONZON: That's right, that's right.

11                  THE CHAIRMAN: I understood you to say it  
12 would be much more general such as: nothing shall  
13 interfere with the moose population in a given area.

14                  MR. MONZON: Cabinet agrees that the  
15 Ministry shall grow a moose herd of 160,000 animals by  
16 the year 2000.

17                  So in the construction, therefore, of the  
18 timber management plan, the construction of that plan  
19 has to take into account the degree to which that  
20 policy or the number of animals that have to be grown  
21 in that general area.

22                  So that is the relationship

23                  THE CHAIRMAN: Is everything sort of  
24 co-ordinated to the extent that the Ministry is aware  
25 of every Cabinet policy that may or may not effect any

1 of your activities in a single area?

2 MR. MONZON: Yes.

3 THE CHAIRMAN: You are?

4 MR. MONZON: Yes.

5 MR. HUNTER: Q. So therefore, sir, there  
6 are other areas of resource management which are  
7 required by policy to be taken into consideration when  
8 you establish timber management plans; is that correct?

9 For example, moose?

10 MR. MONZON: A. Yes. The answer to the  
11 question is that the Ministry, in the preparation of  
12 timber management plans, must have regard for  
13 government policy.

14 Q. In other areas?

15 A. In other -- all government policy.

16 Q. Thank you.

17 A. I would just to -- if I have made it  
18 fuzzy I apologize. On page 6 of the EA Document at the  
19 bottom of the page under Section 1.2.

20 Q. Is this of the Summary or of the  
21 actual?

22 A. The real thing.

23 Q. The real thing. Okay.

24 A. There is a section entitled

25 Legislation and Policy, lines 33 to 36 and line 1 on

1 the next page and that reads:

2 "That in the planning and implementation  
3 of timber management operations MNR  
4 complies with all applicable legislation,  
5 regulations and government policy."

6 And then:

7 "For example, it is necessary to comply  
8 with federal and provincial legislation  
9 with respect to use of pesticides and  
10 occupational health and safety."

11 Q. And then there is: "Ministry of  
12 Natural Resources' policy..." and --

13 A. That's right.

14 Q. And then you get:

15 "And have regard for MNR's land use  
16 guidelines."

17 A. That's right.

18 Q. I don't want to be picky, but it  
19 seems to me that your categorization of the importance  
20 of those guidelines places those guidelines on a higher  
21 level than the phrase:

22 "and have regard to..."

23 Is that a fair observation?

24 'Have regard to' suggests to me that you can look at it  
25 and say: Yes, no or maybe. It is not determinative,

1 it is not fundamental, it is not informative.

2 Are you right, sir, or is that  
3 statement...

4 A. Well, I think you categorized it  
5 correctly as perhaps being, to some degree, a  
6 perception given the fact that we are talking about  
7 timber management plans adhering to policies  
8 established by Cabinet, the Ministry having regard for  
9 land use guidelines, the fact that all of those are  
10 used within the same context, to me satisfies my sense  
11 around the fundamental consideration issue.

12 What I am saying is that the document  
13 puts 'having regard for land use guidelines' within the  
14 same context of Cabinet and Ministry policy.

15 First priority to Cabinet; second order,  
16 Ministry policy; third order, land use guidelines.

17 Q. So that means they are all  
18 fundamental?

19 A. They are all essential.

20 Q. They are all essential. One should  
21 never say never.

22 THE CHAIRMAN: You are not going to  
23 preface this by one final question?

24 MR. HUNTER: No, no, I would never do  
25 that.



1 MR. MARTEL: What is your plan then?

2 MR. MONZON: Can I preface mine by one  
3 final answer.

4 MR. HUNTER: I know you are hopeful,  
5 but...

6 THE CHAIRMAN: I have heard that so many  
7 times prior to a two-hour dissertation that it is  
8 somewhat suspicious.

9 MR. HUNTER: Q. I am intrigued by one  
10 thing. When you go to the ground in relation to timber  
11 management plan, what value in terms of really  
12 understanding what is on the ground is in the Cabinet  
13 Document? How does that help you?

14 Let me refer to something. If you are  
15 looking at a piece of turf, what is it that is going to  
16 be determinative of how you actually draw those lines  
17 in relationship to timber management practices; is it  
18 Cabinet policy, is it MNR policy, or is it the  
19 information in the District Land Use Guidelines?

20 A. Well, you have to ensure, in  
21 preparing a timber management plan, that any of the  
22 activities and strategies that you are going to follow  
23 in the preparation of that plan are not in  
24 contravention of government policy.

25 Q. I appreciate that, but that is very

1       general.

2                   A. Yes. The same thing with respect to  
3       Ministry policy and the Land Use Guidelines serve the  
4       particular function of having identified potential  
5       resource conflicts which are going to have to be dealt  
6       with within the document, and also the preparation of  
7       those guidelines have caused to be prepared, at the  
8       time the guidelines were prepared, a series of  
9       background information relevant to the resource base.

10                   Now, it may be necessary to supplement  
11       that in particular situations, I am not sure, and I  
12       can't comment on the degree to which that may or may  
13       not be necessary.

14                   But you start from the basis of knowing  
15       what the overall policy -- of having that overall  
16       policy and then making sure that you can work that down  
17       and be in a position to know what the conflicts are, to  
18       have an appreciation of those, so when you start into  
19       the development of the plan, some of the basic things  
20       are on the table and you have a sense, in terms of the  
21       strategies, the types of issues that are going to have  
22       to be dealt with, the people, the stakeholders that are  
23       going to have to be consulted, and you can save a lot  
24       of time and a lot of -- by getting at that at a very  
25       early stage in the planning process.

1 Q. Thank you.

2 I think, Mr. Chairman, I am going to --  
3 let's just touch very briefly on the West Patricia  
4 plan.

5 We have agreed that Geraldton, Red Lake,  
6 Sioux Lookout and Moosonee do not have District Land  
7 Use Guidelines; is that correct?

8 A. That's correct.

9 Q. How is planning done in that area --  
10 in those areas, where there are no District Land Use  
11 Guidelines. What information is used?

12 A. I believe, as I indicated earlier in  
13 the evidence on Thursday, we have gone through a  
14 process in those districts whereby the background  
15 information relative to the West Patricia Land Use  
16 Plan, and those districts, has been made available and  
17 we have gone through the process of putting a number of  
18 optional plans forward for discussion by local people  
19 in that area. We do have in place a regional Strategic  
20 Land Use Plan which provides overall policy and  
21 direction.

22 I would submit that given all of those  
23 and given the feedback that the Ministry has had from  
24 the background information and from the optional plans,  
25 together with the local feedback and day-to-day contact

1       that Ministry staff had with stakeholders and clients  
2       and the general public in those various districts, that  
3       there is sufficient information and direction to allow  
4       the preparation of timber management plans in the  
5       effective management units.

6                   Q.   Would it surprise you, Mr. Monzon, if  
7       I were to tell you - and I believe it was a month ago -  
8       there was a meeting between Windigo Tribal Council and  
9       the staff of the Sioux Lookout MNR office and that was  
10      the first time in history that those two groups had  
11      ever met?

12                   A.   The Windigo Tribal Council and...?

13                   Q.   And representatives of the bands.  It  
14      was the first time that the council and those bands had  
15      ever sat down with the Ministry of Natural Resources to  
16      discuss planning issues.  Would that surprise you?

17                   A.   That would surprise me.  I am not  
18      aware of the specific meetings that were held from 1977  
19      through to 1982 with the bands in the West Patricia  
20      area.

21                   I know there were a number of meetings  
22      held.  I am surprised that Windigo Tribal Council was  
23      not part of that, but I think, as I indicated  
24      earlier -- well, I won't go on, I'll take your point.

25                   Q.   Is there a Draft Plan for Sioux



1       Lookout; do you know?

2                   A.   At this point, I don't know.

3       Certainly the instruction that we had from our Minister  
4       relative to the Royal Commission still stands, that was  
5       the plan was not to be issued.

6                   Q.   The plan was not to be issued?

7                   A.   Yes.

8                   Q.   So there may be a plan.   The plan is  
9       not to be issued suggests that there is a plan.

10                  A.   There may be a draft in some form,  
11       whether -- in what form that is, I couldn't comment.

12                  Q.   I presume it would be too much to ask  
13       that that plan be produced for this hearing?

14                  MR. FREIDIN:   I am just wondering how  
15       helpful that would be if it did exist, Mr. Chairman, if  
16       we are talking about a plan which...

17                  MR. HUNTER:   We would just like to see  
18       it, that's all.

19                  MR. FREIDIN:   --I think the witness  
20       indicated isn't referred to.

21                  THE CHAIRMAN:   Do I understand it  
22       correctly in that the Minister indicated that as a  
23       result of the Commission's Report that if such a plan  
24       did exist it is not to be issued?

25                  MR. MONZON:   I don't think that is quite

1 correct, Mr. Chairman. I believe the instruction from  
2 the Minister was that pending the - Mr. Douglas can  
3 help me on this - but pending the release of the Royal  
4 Commission Report and response to that Report by  
5 government, that the West Patricia Land Use Plan would  
6 be held.

7 Even if a -- I believe that is the  
8 substance of it. Even if a Draft Plan existed, it  
9 would undoubtedly be a Draft Document that has not had  
10 the benefit of review relative to the Royal Commission  
11 Report in terms of substance and, therefore, would be  
12 seriously lacking in that regard.

13 MR. HUNTER: Q. Mr. Fahlgren's Report  
14 was released approximately 18 months ago; is that  
15 correct?

16 A. Some time ago.

17 MR. CASTRILLI: December, '85.

18 MR. HUNTER: Excuse me.

19 MR. CASTRILLI: December, '85 that is two  
20 years.

21 MR. MONZON: June '85.

22 MR. HUNTER: Q. June '85?

23 A. Yes.

24 Q. So that is three years ago?

25 A. Yes.

1 THE CHAIRMAN: Well --

2 MR. HUNTER: Q. Is that Draft Plan used,  
3 Mr. Monzon, do you know if it is used...

4 A. I am sorry?

5 Q. Do you know if that plan is used or  
6 that Draft Plan is used in the decision-making process  
7 in Sioux Lookout?

8 A. If there is a plan that exists, I  
9 don't know that it would be used.

10 I would think, if anything is being  
11 used - and this is purely conjecture, Mr. Chairman - it  
12 would be the optional document -- the planning option  
13 document that was prepared and was the subject to  
14 publilc review.

15 That document may be being used together  
16 with the public comment that came about as a result of  
17 that, but I am sorry, we are just into the area of  
18 conjecture here.

19 Q. I could be subject to correction, Mr.  
20 Monzon, but it is my best information that there is no  
21 public plan now in Sioux Lookout area; that is, there  
22 is no process that has been gone through in terms of a  
23 piece of paper which is being discussed, but I will  
24 check that.

25 A. In terms of the land use guideline?

1 Q. That is correct, sir.

2 A. I think that is probably correct  
3 given that the government has not given a formal  
4 response to Mr. Fahlgren's Report and that was the  
5 commitment of the Minister of the day, that the  
6 guideline was not to be published until the government  
7 had made a formal response.

8 Q. Quite bizarre.

9 I am going to really try to move now  
10 because I have a sense that I can try to deal with  
11 these last remaining issues hopefully in 10 or 15  
12 minutes.

13 I want to thank Mr. Castrilli for his  
14 phonebook. Do I have to put this in as an exhibit?

15 THE CHAIRMAN: We will take judicial  
16 notice of the Ontario Government Phonebook.

17 MR. HUNTER: Judicial notice of...

18 MR. FREIDIN: Ask him whether it is  
19 policy.

20 MR. HUNTER: Q. Mr. Monzon, you were  
21 Assistant Department Minister from 1985 to 1988 -- the  
22 Assistant Department Minister, Administration Division;  
23 is that correct, sir?

24 A. That's correct.

25 Q. So, therefore, you were you there



1 during the period of the review of this document; that  
2 is, this was submitted in June '85.

3 A. Yes.

4 Q. The Draft Document.

5 A. Yes.

6 Q. I notice in your - correct me if I am  
7 wrong - I am going through the phonebook and I see  
8 something called the Office of Indian Resource Policy  
9 and the Director one E.G. Wilson?

10 A. Yes.

11 Q. Did Mr. Wilson report to you?

12 A. No.

13 Q. Did you have any supervisory  
14 responsibility for his activities?

15 A. No.

16 Q. So he just sort of falls into...

17 A. No, he reported to Mr. Garrett the  
18 Executive Co-Ordinator of Lands & Waters.

19 Q. Did Mr. Garrett report to you?

20 A. Report to me? No, Mr. Garrett  
21 reported to the Deputy Minister.

22 Q. I see.

23 A. Excuse me, you are talking 1988 here,  
24 are we?

25 Q. Well no, '85.

1 A. 1985.

2 Q. No, let me be very clear. From the  
3 period of '85 to '88, was there any point in time where  
4 Mr. Wilson reported to Mr. Garrett who reported to you,  
5 or Mr. Wilson reported directly to you?

6 A. To the best of my recollection  
7 from -- at least from 1985 on, Mr. Wilson would have  
8 reported to the Executive Co-Ordinator of Lands &  
9 Waters.

10 Q. Yes.

11 A. That has been Mr. Garrett for some  
12 years now.

13 Q. Yes.

14 A. And Mr. Garrett, in that position--

15 Q. Yes.

16 A. --always reported from 1985 on anyway  
17 to the Deputy Minister.

18 Q. So you had no involvement in the  
19 policy or activities in relationship to this office?

20 A. Other than at the overview level of  
21 the Senior Executive Committee of the Ministry.

22 Q. Fine, thank you.

23 Mr. Monzon, I don't expect you to agree  
24 with me, but would you accept for the moment, subject  
25 to your check, that the 1985 Draft Document does not

1 contain one single reference to the native community,  
2 to native interests, or native concerns?

3 A. I think that is a matter I would want  
4 to check on.

5 Q. Okay, fine. Upon your check, would  
6 you inform the Board of your opinion on that?

7 A. Yes.

8 Q. During the course of the preparation  
9 of this document and its subsequent review, to your  
10 knowledge, did the Office of Native Policy in MNR --  
11 Office of Indian Resource Policy, excuse me, make any  
12 representations, express any concerns or interests on  
13 behalf of native individuals with respect to the  
14 preparation first of the Class Assessment Document,  
15 1985, and with respect to the Class Assessment  
16 Document, 1987?

17 A. Your question is basically: Was that  
18 Office involved in the review?

19 Q. Well, what I am really getting at is:  
20 I have gone through this document too many times. I do  
21 not see in it any statements by that Office in terms of  
22 the review process.

23 Does that mean that that unit, to the  
24 best of your knowledge, make any comments at any time  
25 in relationship to the class assessment?

1                   A. My sense would be that I could not  
2 understand how we could undertake a review such as this  
3 and not involve that office and not involve the other  
4 aspects of the Ministry.

5                   I would have to check more rigidly, I  
6 suppose, but I think one has to understand that when  
7 responding to an environmental review we respond as a  
8 Ministry and, therefore, the comments of the various  
9 offices and branches and divisions would be rolled  
10 together into the comment of the Ministry of Natural  
11 Resources.

12                   So from that standpoint it would be  
13 difficult to identify any specific item that that  
14 Office has put into that review.

15                   THE CHAIRMAN: Mr. Monzon, in furtherance  
16 of their obligation to conduct and co-ordinate the  
17 government review, would the Ministry of the  
18 Environment not have contacted that Office?

19                   MR. MONZON: My sense, Mr. Chairman - Mr.  
20 Douglas can correct me - is that the Ministry of  
21 Natural Resources would be responsible for  
22 co-ordinating the response within the Ministry.

23                   THE CHAIRMAN: That is within your  
24 Ministry?

25                   MR. DOUGLAS: Yes.



1 MR. MONZON: That's right.

2 THE CHAIRMAN: But would not the MOE have  
3 the overall obligation of co-ordinating, this is under  
4 the Act.

5 MR. MONZON: Yes.

6 THE CHAIRMAN: The government review.

7 MR. MONZON: Yes.

8 THE CHAIRMAN: The contacting of any  
9 other agency of government that might have an interest  
10 in "the application or EA under consideration."?

11 MR. MONZON: I would agree with that, but  
12 given that the Office of Indian Resource Policy was  
13 part of the Ministry of Natural Resources...

14 THE CHAIRMAN: Oh, I see. So MOE's  
15 enquiry as to whether this directorate might have any  
16 interest might not be split down, he may just write  
17 to--

18 MR. MONZON: The Ministry of Natural  
19 Resources.

20 THE CHAIRMAN: --the Ministry of Natural  
21 Resources and expect you to cover all sub-agencies  
22 under your --

23 MR. MONZON: And we would do that, yes.

24 MR. FREIDIN: And that group of the  
25 Ministry that Mr. Monzon is referring to is now the

1 Ontario Native Affairs Directorate who were contacted  
2 by MOE in relation to this environmental assessment and  
3 whose comments appear in the government review  
4 document.

5 MR. HUNTER: I don't completely agree  
6 with my friend. I believe that the Office of Indian  
7 Resource Policy existed at the same time as --

8 MR. MONZON: The Native Affairs  
9 Directorate?

10 MR. HUNTER: Native Affairs Directorate,  
11 because there is, of course, subsequent correspondence  
12 between -- perhaps I will get into that later.

13 MR. MONZON: I think the best way to  
14 phrase it, or to understand it, is that recently --

15 MR. DOUGLAS: February.

16 MR. MONZON: January, February, 1988,  
17 certain responsibilities of the Office of Indian  
18 Resource Policy were transferred to the Native Affairs  
19 Directorate.

20 MR. HUNTER: Q. Yes, but there was a  
21 period of time when the Office of Indian Resource  
22 Policy co-existed with the Native Affairs Directorate?

23 MR. MONZON: A. Yes, in different  
24 ministries.

25 Q. Yes, that is correct.

1                   So, to your knowledge, the Office of  
2                   Indian Resource Policy did not make any  
3                   representations -- well, they may have made  
4                   representations, but if you go to the '85 Document and  
5                   if you accept my observation that there is no reference  
6                   to native interests or concerns in the '85 Document, is  
7                   it a reasonable assumption to say that this Office  
8                   either didn't say anything to you or said: Don't say  
9                   anything about Indians?

10                  A. The only assumption I think I could  
11                  make is that in preparing the response on behalf of the  
12                  Ministry of Natural Resources that all of the -- that  
13                  all of the departments - (all of the departments) - all  
14                  of the branches within the Ministry would have been  
15                  contacted, and that the comments received from those  
16                  branches would, together -- would have been put  
17                  together as a Ministry of Natural Resources' response.

18                  Now, relative to the 1985 Document --

19                  THE CHAIRMAN: That is Exhibit 25?

20                  MR. MONZON: Exhibit 25. 25, yes.

21                  The Ministry would have, from my  
22                  understanding and we will get -- this would have been  
23                  reviewed by all of the branches within the Ministry's  
24                  organization before it was submitted.

25                  MR. HUNTER: Q. So, therefore, it is not

1 an unreasonable assumption to say that the Office of  
2 Indian Resource Policy didn't say anything?

3 A. They may have not said anything, they  
4 may have said something and then you can break that  
5 down into various categories of appropriate, not  
6 appropriate, may be included. We would have to look at  
7 that.

8 MR. DOUGLAS: A. I might be able to help  
9 out a bit here.

10 I believe in '85 - and I'm going from  
11 recall, so I may not have the month, October or  
12 November correct - but we took -- we identified what we  
13 viewed to be the major issues and that was reviewed in  
14 and all-day session of our senior management which  
15 included Mr. Wilson's superior and he would have that  
16 material in advance.

17 Now, trying to recall subsequent  
18 contact - again, I am not certain - but I believe there  
19 were discussions in terms of some of the public  
20 consultation aspects of how to consult with natives in  
21 which we sought advice from that Office, and I  
22 believe - and again I am going on memory - they  
23 stressed the importance of verbal communications to us  
24 as opposed to going the written way only.

25 So those things stick in my mind.



1 MR. HUNTER: Mr. Chairman, I draw your  
2 attention to Exhibit 5, the Government Review and  
3 specifically to page 107 and 108, and then I will make  
4 reference to 109.

5 Q. As I understand these letters, Ms.  
6 Clap, who was the Executive Co-Ordinator of the Office  
7 of Native Affairs Policy reviewed the 1985 Class  
8 Assessment, and she said:

9 "We have reviewed the Class EA as well--"  
10 This is a letter to you, Mr. Douglas.

11 MR. DOUGLAS: A. Yes.

12 Q. "...as well as Nishnawbe, Chiefs of  
13 Ontario Union which was forwarded. I do  
14 not have any specific comments with  
15 respect to the above noted Class  
16 Assessment."

17 And a letter to Ms. Morgan on 107 says:  
18 "I have advised Mr. Douglas that this  
19 office does not have any specific  
20 comments or concerns."

21 Doesn't it surprise you that Ms. Clap or  
22 that office would have no concerns about a document  
23 that didn't even mention native people in relationship  
24 to timber class assessment in northern Ontario?

25 MR. FREIDIN: On the assumption that you

1 are correct, there are no references.

2 MR. HUNTER: Yes, on the assumption that  
3 there are no references.

4 MR. DOUGLAS: Are you asking me that  
5 question?

6 MR. HUNTER: Q. Mm-hmm.

7 MR. DOUGLAS: A. I suspect, and I can't  
8 speak for Ms. Clap, but we...

9 Q. Well, I am not asking you to speak  
10 for Ms. Clap, I am asking you to speak for yourself.

11 A. I am not sure I am surprised in the  
12 sense that that document outlined a number of different  
13 ways in which, for example, concerns with regard to  
14 fishing or hunting or trapping can be taken into  
15 account according to the planning process identified in  
16 the Environmental Assessment Document.

17 To my knowledge, those were some of the  
18 key concerns, how would timber management affect those  
19 traditional uses.

20 Q. Okay. Now, let's turn to page 109,  
21 September 14th, 1987, and I can't even imagine what  
22 event occurred between 1986 and '87.

23 We have a letter from Mr. Krasnik to Mr.  
24 Green and I believe that he expresses a substantial  
25 number of concerns.

1                   Mr. Krasnik is now the Executive Director  
2 of the Native Affairs Directorate.

3                   I think, if you would accept Mr. Freidin  
4 that paraphrase, he identifies three concerns:

5                   "That a statement should be added to  
6 ensure that timber harvesting and related  
7 activities do not impact negatively upon  
8 native people. Two, that hunting,  
9 fishing, trapping and guiding activities  
10 of native people should receive a measure  
11 of protection. And, three, some thought  
12 should be given to the impact of timber  
13 harvesting which may occur in close  
14 Proximity to an Indian reserve  
15 or a native community."

16                  I am really intrigued. Mr. Krasnik's  
17 comments were forwarded to you in September 14th, 1987,  
18 but the Amended Class Environmental Assessment was  
19 already filed in July, 6, 1987, some three months  
20 after.

21                  What was the purpose of Mr. Krasnik's  
22 comments; what was the process that we were involved in  
23 at that time; what was he responding to?

24                  A. Well, we amended the document in  
25 June, '87 and it went through a second round of

1 government review, and what we are picking up here are  
2 the results of that second review.

3 Q. But that review occurred after you  
4 had already filed the second -- the document?

5 A. Right.

6 Q. So why have the review?

7 A. Well, it is my understanding that's  
8 part of the process, that you submit a document, we got  
9 feedback on that document, and based on a number of  
10 things, for example, Dr. Baskerville's Report, based on  
11 our experience with trying to apply that new process in  
12 the field for one year, and some of our comments from  
13 government agencies in terms of concerns or needs for  
14 clarification, we decided that it would be best to  
15 amend the document.

16 We amended that document in June and, as  
17 part of the normal process, MOE send it out again, and  
18 in that second round we got comments back from Mr.  
19 Krasnik to be identified.

20 So it is not surprising that there was a  
21 second round. We made the decision that we wanted to  
22 amend the document before we went to a hearing.

23 Q. Is it fair to say that in the first  
24 instance the Ontario Review did not identify any native  
25 concerns or that whatever concerns were subsequently



1 identified by Mr. Krasnik were not incorporated into  
2 this document?

3 A. No, they weren't incorporated into  
4 the '87 Document because they came after the fact,  
5 because there had been a commitment to go to a hearing  
6 and given, for example, the Chairman's comments, that  
7 we knew we could make changes in terms of providing  
8 evidence at this hearing, and we wanted to get to the  
9 hearing, we proceeded.

10 We responded to Mr. Krasnik in a letter  
11 in December of '87 and, as Mr. Freidin has outlined, we  
12 will be addressing a number of positions that he wanted  
13 to put forward as we go through this hearing.

14 We didn't want to go through a third  
15 round of amendments.

16 Q. Would you agree with my assertion  
17 that the Ontario Government Review process did not  
18 provide adequate, reasonable, fair, or timely  
19 information or opinions with respect to native concerns  
20 in the development of the Class Assessment Document in  
21 both 1985 and 1987?

22 A. I am not sure that I am in the  
23 position to make that type of judgment.

24 MR. FREIDIN: If you want my comment on  
25 it, I will address that matter.

1 MR. HUNTER: No, I don't wish to hear it.  
2 You can address it in your evidence.

3 MR. DOUGLAS: I am not an expert in this  
4 area, so I would have to take what I am given.

5 THE CHAIRMAN: I suppose that would  
6 probably be a subject matter of the Board's  
7 consideration at the end of the day, as well, Mr.  
8 Hunter?

9 MR. HUNTER: Yes, Mr. Chairman, I believe  
10 you will hear substantial argument on that point.

11 Q. Could we go to the June, '87  
12 Document, Exhibit 4 at page 7 of Part I. Part I, the  
13 Undertaking, page 7, and I will really try to speed up,  
14 Mr. Chairman.

15 I draw your attention to lines 14 to 36.

16 MR. MARTEL: Which part, the first or  
17 second?

18 MS. KOVEN: Is that the summary?

19 MR. HUNTER: No, we are into the real  
20 thing. Part 1, the Undertaking.

21 MR. MARTEL: Which line?

22 MR. HUNTER: Excuse me, sir?

23 MR. MARTEL: Which line?

24 MR. HUNTER: Lines 14 to 36.

25 Q. Mr. Douglas and Mr. Monzon, who

1 prepared that position?

2 MR. FREIDIN: Does it make any difference  
3 who prepared it? It is the position of the Ministry of  
4 Natural Resources.

5 THE CHAIRMAN: Well, it may make a  
6 difference as to whether they can answer the questions  
7 on it.

8 MR. DOUGLAS: I didn't personally prepare  
9 that, no.

10 MR. HUNTER: Q. Mr. Monzon, you  
11 didn't...

12 MR. MONZON: A. No, I didn't either.

13 Q. So this is MNR policy in relationship  
14 to the application of the Class Assessment and native  
15 people; is that correct?

16 MR. DOUGLAS: A. I would say that this  
17 provides background to the proposal we are putting  
18 forth to the Board.

19 Certainly there will be another panel - I  
20 believe it is Panel 6 - which will speak to these  
21 matters and would have more expertise than I would.

22 Q. I really want to understand these two  
23 paragraphs.

24 Is it a fair interpretation of this  
25 document to say that MNR cannot, will not, or won't

1 deal at a level of generality in terms of identifying  
2 mitigative measures because of treaty and aboriginal  
3 rights; is that correct, unresolved?

4 A. My understanding is that there are  
5 points in which there are difficulties in  
6 interpretation, in terms of aboriginal rights.

7 My understanding as a lay person is that  
8 there is no agreement among governments. We have had  
9 first ministers addressing that issue.

10 In terms of treaty rights, there is a  
11 variance from one treaty area to another, and even in  
12 cases where there is a clear written word, there is  
13 some difference of opinion of what those written words  
14 mean and whether there are unwritten words that should  
15 be used in that interpretation.

16 I cannot speak of the individual treaties  
17 with any experience or with any expertise.

18 Q. If I were to suggest to you that if  
19 treaty and aboriginal rights were not an issue, would  
20 MNR then be prepared to identify, establish, or if need  
21 be, accept general statements, principle in terms of  
22 the management or the relationship between native  
23 communities and timber management activity as, in part,  
24 identified by Mr. Krasnik's letter to you?

25 A. I am not sure I understand your



1 question.

2 Q. For example: There shall be no  
3 cutting within certain minimum areas of reserves; there  
4 shall be no cutting within certain number of feet or  
5 yards of fishable, navigable rivers where indians are  
6 active and involved in traditional activity; there  
7 shall be no cutting within certain areas of existing  
8 traps lines; that's what I am talking about.'

9 It has nothing to do with treaty and  
10 aboriginal rights.

11 A. If we were talking about situations  
12 in which impacts of the timber management activities  
13 had negative impacts on other uses or users, certainly  
14 we would take them into account and that is in fact --

15 Q. I am asking: Would you incorporate  
16 those statements into the Class EA Document as general  
17 statements of mitigation measures that should be  
18 considered and applied in relationship to the  
19 management of timber activities on native communities;  
20 yes or no? Just yes or no.

21 A. Well, I believe this gets back to the  
22 issue or the concern or the confusion over what treaty  
23 rights and--

24 Q. No, no, no, no.

25 A. --aboriginal rights are.

1 Q. I am saying forget treaty rights,  
2 forget aboriginal rights.

3 I am saying: If you have a reserve and  
4 you have activities on that reserve, will the Ministry  
5 of Natural Resources put into this document statements  
6 of a general application which will deal with  
7 mitigation measures and environmental concerns on those  
8 reserves; yes or no?

9 THE CHAIRMAN: Mr. Hunter, just a moment.  
10 How can they amend the document by putting it into a  
11 document that has been issued?

12 They might address it at a hearing, they  
13 might address it in terms of putting a panel here and  
14 adducing evidence that they would consider that, which  
15 then might become a part of the environmental  
16 assessment, but you are dealing with a document that  
17 has already been -- not finalized, but issued.

18 They are not going to amend the document,  
19 per se, at this stage. I think it is amended by the  
20 process.

21 MR. HUNTER: I stand corrected, Mr.  
22 Chairman. Will they lead evidence that will lead to a  
23 reasonable conclusion that --

24 THE CHAIRMAN: If the Board accepts the  
25 assessment, as amended, it is included by the Board's

1       amending process, so to speak, at the hearing. I would  
2       go along with that.

3                   MR. HUNTER: Thank you, Mr. Chairman.

4                   MR. DOUGLAS: I guess I have the -- I am  
5       confused by the fact that if there were no such things  
6       as aboriginal rights, there was no such thing as treaty  
7       rights, I can't understand how natives would be "any  
8       different" than anyone else and that those kinds of  
9       measures that we would take to protect any community,  
10      any land use, any use would be any different.

11                  MR. HUNTER: Q. So, therefore, it is  
12      MNR's position that it is only treaty and/or aboriginal  
13      rights which extend to the native communities in  
14      northern Ontario any different consideration than  
15      anyone else; is that correct, sir?

16                  MR. DOUGLAS: A. Plus the fact that they  
17      are local and traditional users. And, as Mr. Monzon  
18      has indicated, they always get special attention.  
19      People who depend on the resource for a particular  
20      aspect of their livelihood, or their social being,  
21      their social life, that gets special consideration.

22                  Q. Let's focus on that point.

23                  Given that special consideration or  
24      different consideration, will MNR adduce evidence that  
25      would allow the EA Document to be amended or to have

1 terms and conditions incorporated that would allow  
2 those special considerations to be taken into account;  
3 yes or no?

4 I mean, I obviously care what your answer  
5 is, just yes or no?

6 A. That would be difficult to deal with  
7 in the abstract. If we started talking about  
8 particular uses and particular impacts, certainly we  
9 would have to consider that, but I have difficulty  
10 dealing with your question in the abstract.

11 THE CHAIRMAN: And that doesn't really  
12 deal with the question, Mr. Hunter, that regardless of  
13 what MNR's position is on treaties and aboriginal  
14 rights, that may not coincide with the Board's position  
15 when it comes to consider its decision and/or  
16 conditions.

17 In other words, Mr. Freidin, we may take  
18 into account, as a result of the evidence adduced,  
19 impacts on native communities which MNR chose not to in  
20 their documentation because of the fact that they felt  
21 treaty rights and aboriginal rights may prevent them  
22 from doing so, so they maybe did not choose to.

23 But the Board may take into account some  
24 of those impacts in its decision. I do not know if I  
25 am making myself clear.



1 MR. FREIDIN: No, I am somewhat -- I  
2 don't know if it is the time of the day, but...

3 MR. HUNTER: I really am going to try to  
4 wrap it up in five minutes, I appreciate everybody's  
5 tired, but there is a couple of points.

6 THE CHAIRMAN: I guess all I am saing is  
7 I am not sure the Board necessarily is under the same  
8 constrictions, in terms of its decision based on this  
9 application, of the fact that the Ministry did not  
10 choose in its EA to refer to impacts on native  
11 communities, specifically because of their view of  
12 the - not importance - but their view of aboriginal and  
13 treaty rights as is stated in this paragraph.

14 MR. FREIDIN: If what you are saying is  
15 this Board may hear evidence as to how these activities  
16 take place in native communities and consider whether  
17 those effects are of a nature that are unacceptable to  
18 this Board and don't reasonably take into account those  
19 effects --

20 THE CHAIRMAN: Exactly.

21 MR. FREIDIN: Sure.

22 THE CHAIRMAN: That is exactly what I am  
23 saying, whether or not the Ministry chose to deal with  
24 it because of their reasons stated in this paragraph.

25 MR. FREIDIN: I think the Ministry -- I

1 will tell you that the Ministry will be talking about  
2 effects on certain activities.

3 THE CHAIRMAN: And so might the Board,  
4 that is the only point I will make.

5 Sorry, Mr. Hunter.

6 MR. HUNTER: Thank you, Mr. Chairman.

7 Q. So it is your view that MNR's policy  
8 is that native issues are amenable to resolution at the  
9 local level and that's where those matters are to be  
10 dealt with; is that correct, Mr. Douglas?

11 MR. DOUGLAS: A. There are certainly a  
12 range of issues, some of which would have to be  
13 resolved through processes such as First Ministers  
14 Conferences, the Indian Commissioner of Ontario deals  
15 with some of these issues. We have to wait the  
16 resolution of those.

17 Q. What does that have to do with the  
18 class assessment on timber management and its effect on  
19 native communities?

20 A. Well, what we will be dealing with  
21 under the Class EA is the impacts on the resources and  
22 how one can make sure that, in carrying out timber  
23 management, you prevent negative impacts or you  
24 mitigate them.

25 So you would make sure that in a carrying

1 out timber management you would protect the fish, you  
2 protect the moose.

3 Q. One last small set of questions.

4 If I could turn to page 242 to your  
5 response to Mr. Krasnik. I point to the second full  
6 paragraph, Mr. Douglas:

7 "As you are aware, major amendments to  
8 the Class EA were produced in June, '87  
9 and submitted to the Minister of the  
10 Environment. In the production of those  
11 amendments, MNR was aware that the  
12 original document was inadequate with  
13 respect to potential effects of timber  
14 management activities on native people."

15 "In the production of those amendments...", do I  
16 interpret that to mean as you were amending the Class  
17 EA you became aware that the document was inadequate?

18 At what point in the process did someone  
19 come to you and say: Hey, you have got a problem. Did  
20 someone say you haven't mentioned native people?

21 A. I don't remember the exact sequence.  
22 I remember we did make some amendments particularly in  
23 respect to notice and concerns of ensuring that the  
24 native people got proper notice.

25 We were also aware at that time that

1       there were discussions going on through other processes  
2       which made the nature of understanding of aboriginal  
3       rights and treaty rights -- we knew that was an issue.  
4       So we acknowledged that as an issue.

5               Q.   So, in other words, you define -- I  
6       am intrigued. Did someone come to you and say that --  
7       did some indian group come to you and say: You have  
8       got a problem with the Class EA, '85 because of treaty  
9       and aboriginal rights?

10              I mean, there has been discussions on  
11       treaty and aboriginal rights for a hundred years. You  
12       could have identified those as problems and put them  
13       into the 1985 document.

14              A.   I am not --

15              Q.   Why did the Ministry choose to deal  
16       with the issue of the impact of timbering on native  
17       people through the binoculars of treaty and aboriginal  
18       rights?

19              A.   I believe we were just generally  
20       becoming more aware of the issues in that time frame.

21              Q.   So you were of the view that the 1985  
22       Document was inadequate with respect to native  
23       concerns; is that correct, as stated to Mr. Krasnik?

24              A.   Certainly, when we wrote this letter  
25       in '87 in December, there had been a number of



1 discussions and we, at that time, realized that we  
2 should be making some changes.

3 Q. And you believe that this document is  
4 now adequate with respect to identifying issues and  
5 concerns in relationship to the impact of timber  
6 activity on native people; is that correct?

7 A. If you read the context of this -- or  
8 this complete letter to Mr. Krasnik, we have identified  
9 a number of things, a number of changes that we have  
10 made, a number of courses of action that need to be  
11 followed which we have accepted and identified that we  
12 will be producing evidence on.

13 Q. I ask you: Are you satisfied that  
14 this document, this document, is adequate?

15 A. I said, by the nature of the response  
16 to Mr. Krasnik that it wasn't and, in fact, based on  
17 our discussions, that we would have to produce more  
18 evidence which we are doing.

19 We have followed up on a number of things  
20 in regard to this letter. For example, we are getting  
21 two documents translated into the native language to  
22 identify how timber management planning is undertaken;  
23 we are producing another document in the native  
24 language to deal with a better description of,  
25 essentially, our management system and how land use

1 planning and resource management planning fit together.

2 And those documents are being prepared  
3 with the input of the Native Directorate.

4 So we are following up on the commitments  
5 that are identified in this document of December, '87  
6 and the Board will have -- will see what we are doing -  
7 based on more expert evidence than I can give - in  
8 respect to treaty rights and aboriginal rights and what  
9 they mean.

10 That will be provided to the Board and  
11 right now we are conferring with the Office of Native  
12 Affairs to ensure that our interpretation and their  
13 interpretation of these various things are  
14 co-ordinated.

15 We will be providing other evidence in  
16 Panel No. 6 outlining our policies in relationship to  
17 the Timber EA and things like that. We will also be  
18 giving some socio-economic evidence related to native  
19 people in that package. So we are providing --

20 Q. So these are all things you are going  
21 to do?

22 A. That's right, yes.

23 And, as I said, the reason it is not in  
24 that document is that we thought that two amendments --  
25 or the original document and amendment was enough, we

1 would rather proceed with the hearing.

2 So to interpret properly the letter of  
3 December 12th, Mr. Krasnik raised an issue, we  
4 identified a course of action to follow and we are  
5 following that course of action.

6 Q. Mr. Douglas, do you believe that  
7 Indian traditional activities are of value and should  
8 be taken into consideration--

9 A. Oh certainly.

10 Q. --mapping and other activities.

11 A. We certainly need to know where  
12 native people have used the resource base and it is  
13 important to their livelihood, certainly.

14 MR. HUNTER: Thank you. No further  
15 questions, Mr. Chairman.

16 THE CHAIRMAN: Thank you, Mr. Hunter.

17 Well, ladies and gentlemen, we did not  
18 get an opportunity - and perhaps if you would pass on  
19 to Ms. Murphy the fact that we have not yet dealt with  
20 that suggestion that she brought up this morning, which  
21 we will do tonight - regarding procedures to deal with  
22 the next witnesses that are in Panel 5.

23 MR. FREIDIN: We can deal with that  
24 tomorrow.

25 THE CHAIRMAN: We can deal with that

1 tomorrow. We will adjourn now.

2 Tomorrow is Thursday, and I hate to even  
3 suggest that you should be here at 8:30 and, in fact, I  
4 think in view of tonight's hour maybe we just won't.

5 So I think tomorrow - because this is  
6 going to obviously go on, we are going to have a short  
7 day starting Monday, we will be rising, as you are  
8 aware at two o'clock.

9 MR. CASTRILLI: Sorry, Mr. Chairman, I  
10 didn't hear the time you are going to start tomorrow  
11 morning?

12 THE CHAIRMAN: 9:30 in the morning.

13 MR. HUNTER: Mr. Chairman, thank you for  
14 your indulgence, and Mr. Monzon.

15 THE CHAIRMAN: I think tomorrow we  
16 proceed with Mr. Williams and start with you.

17 Thank you very much, ladies and  
18 gentlemen. We will adjourn until 9:30 tomorrow.

19 ---Whereupon the hearing adjourned at 6:45 p.m., to  
20 reconvene on Thursday, May 19th, 1988 commencing at  
9:30 a.m.

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